

No. 11919

**United States
Circuit Court of Appeals
For the Ninth Circuit.**

NATIONAL LABOR RELATIONS BOARD,
Petitioner

vs.

**O'KEEFE AND MERRITT MANUFACTURING
COMPANY, etc.,**

Appellees.

**UNITED STEELWORKERS OF AMERICA,
STOVE DIVISION, LOCAL 1981, C.I.O., and
PHILIP MURRAY, Individually and as
President of the United Steelworkers of
America, C.I.O.,**

Intervenors.

**Transcript of Record
In Four Volumes
VOLUME II
Pages 457 to 912**

**Upon Petition for Enforcement With Modifications of an
Order of the National Labor Relations Board.**

SEP 1 - 1948

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Upon Petition for Enforcement With Modifications of an
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(Testimony of Charles Spallino.)

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Was there anything further said on this subject at that time?

A. That is about all.

Q. Was or was not anything said by anybody present at that time and place concerning the employees of the shipping department?

Mr. Garrett: Objected to as leading and suggestive, and secondly, as incompetent, irrelevant and immaterial.

Trial Examiner Kent: He may answer for the same reasons. It is clear to me that counsel is attempting, I think properly, to refresh the witness' recollection. For that purpose, I think the question is proper.

Mr. Garrett: I am willing that counsel should show us a written statement signed by the witness so that we might be sure that these questions were an attempt in good [278] faith to refresh the recollection of the witness. I would not object to the witness being shown his own statement, if your Honor please.

Mr. Schullman: I join in that, because this is not the legal procedure by which you refresh a witness' recollection. That is true not only with courts of law, it is true under the NLRB. When you refresh a witness' recollection you do not refresh it on the subjective thought of counsel, you refresh it from written indicia which he prepared in advance, which the witness has failed to testify from in extensive form, you refresh it from other

(Testimony of Charles Spallino.)

matters which the witness has prepared, and something he gave to the counsel, but you do not refresh it from an exploratory inquiry after a witness has repeatedly said he has concluded his testimony.

I would like to see a case where you can go to that extent, any place, in refreshing a witness' recollection. This is beyond the confines of law in the Federal Court. It is beyond the confines of law within the State of California, the extent to which you may refresh a witness' memory, and it is not the proper procedure by which to refresh a witness' memory.

Trial Examiner Kent: Well, I have ruled.

Mr. Schullman: I realize there is nothing we can do except object to the ruling.

Mr. Tyre: Well, then, object and let's go on.

Mr. Schullman: If you don't like it, Mr. Tyre, you may go on, but I am going to stay to protect my record with every conceivable legal method that I can.

Trial Examiner Kent: Well, that is the right of counsel.

Mr. Schullman: If you don't want to, you may leave.

Mr. Tyre: I think, Mr. Examiner, you have given counsel a standing objection to this line of testimony. I don't think it is proper for counsel to go on and urge an objection and argue it at length. If counsel wants to extend this record, we will deem it extended. I don't think we have to

(Testimony of Charles Spallino.)

waste time of counsel here listening to silly argument.

Mr. Schullman: I move—May I ask——

Trial Examiner Kent: Let us proceed.

Mr. Schullman: May I ask, your Honor, that the proceeding gratuitous remarks of counsel be deleted from the record, as being merely a self-serving assertion within the limited scope of counsel?

Mr. Tyre: You better go to law school.

Mr. Nicoson: I suggest we try this case and cut out this stuff.

Mr. Tyre: That is stipulated.

Mr. Nicoson: Will you read the question to the witness, please? [280]

(The question was read.)

Mr. Garrett: Since my objection has been overruled, may we again request that the Trial Examiner direct the witness to answer that question yes or no?

Trial Examiner Kent: I will grant that.

Mr. Nicoson: I have no objection to that.

Trial Examiner Kent: Proceed and answer yes or no.

The Witness: Yes.

Q. (By Mr. Nicoson): What was said and who said it?

A. This Teamster fellow, I can't recall his name at the present, rather confusing, he did—well, in fact, I had suggested that he wanted to meet the—

(Testimony of Charles Spallino.)

he wanted to know how many boys were in the shipping department, and I pointed out that he could see these boys at 8:00 o'clock in the morning, and that I would talk to their foreman and talk to the men and get them together in the morning. That was about 8:00 o'clock in the morning, that this representative of the Teamsters Union came to the shop and——

Q. Wait a minute. Let's just stay in one meeting at a time. Was that all that was said upon that subject?

A. Yes, that I would get the boys together for him for 8:00 o'clock in the morning.

Q. Will you state for the record if at that time and place when this conversation took place and at all times during the conversation Mr. Collins was present? [281] A. Yes.

Mr. Garrett: Objected to as leading and suggestive. May I have the last question and answer read?

(The record was read.)

Mr. Garrett: I take it that my objection is overruled, your Honor?

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Nicoson): Did anything else happen at that time or was said at that time that you now recall?

A. Well, outside of making that plan, I can't recall.

Q. Did you yourself do anything about a meet-

(Testimony of Charles Spallino.)

ing with the shipping department employees?

A. I did.

Q. What did you do?

A. Well, I went to the shipping department and told them to tell the boys.

Q. Who did you see there?

A. Well, there was Bob White. I told Bob White. [282]

Q. Who is Bob White?

A. He is the shipping clerk.

Q. All right.

A. I told him that this fellow from the Teamsters' Union was coming down there at 8:00 o'clock in the morning, and he was going to talk to the boys, to his—all his men, and at 8:00 o'clock to have them outside there, and this fellow here was going to explain to the—this representative of the Teamsters' Union was going to give the boys all the information on the Teamsters' organization.

Q. Did you tell Mr. White where you got this idea, thought or plan?

A. Well, I suppose he knew that we were organizing the place.

Q. No, not what you supposed. Did you tell him?

A. Well, he knew.

Q. What did you tell him?

A. Well, I told him that they were going to organize the Teamsters and this fellow here was going to come down and give them the information.

Q. Did you understand my question? Will you read the question back and see if he understood?

(Testimony of Charles Spallino.)

(Question read as follows: Did you tell Mr. White where you got this idea, thought or plan?)

Q. (By Mr. Nicoson): Did you understand that question, Mr. [283] Spallino?

A. Yes. Well, from Collins' office.

Q. Did you tell Mr. White where the plan, thought or idea came from?

A. Well, apparently all the foremen in there——

Q. Did you tell him?

Mr. Garrett: Objected to as not responsive to the question, and the question is of leading character anyhow. If your Honor please, I object to it on that ground.

Mr. Schullman: Your Honor, if I may so state, I haven't got any authority to state, because I think Mr. Stevenson——

Mr. Nicoson: I am sorry you people seem to be more concerned about hanging somebody than seeking to get the meat of it. Let us get the meat of it.

Mr. Schullman: Your Honor, Mr. Stevenson is not here.

Mr. Nicoson: What we would like to do is to get the meat of it.

Mr. Schullman: Mr. Stevenson is not here. I do not represent the Teamsters, but I do press the objection for the Teamsters until such time as he reverses my objection in his behalf.

Mr. Nicoson: I question counsel's right to appear for the Teamsters or do anything for them.

(Testimony of Charles Spallino.)

Mr. Schullman: Then I will object for myself, that the testimony of this witness in reference to what he told a [284] shipping clerk is double hearsay and that it cannot be taken and that it is inadmissible for such purposes. You are having him tell somebody what somebody else told him.

Trial Examiner Kent: I am inclined to agree to some extent with counsel, unless the authority of the shipping clerk is brought out in the record. I don't know what the shipping clerk's duties are.

Q. (By Mr. Nicoson): Do you know what the shipping clerk's duties are, what Mr. White's duties, do you know what they are?

A. Well, he is in charge of the shipping and he is in charge of the men in the shipping department, as far as I know.

Mr. Nicoson: Now, may I put the question to him? Will you read it to him?

(Question reread as follows: Did you tell Mr. White where you got this idea, thought or plan?)

Q. (By Mr. Nicoson): Do you understand that question? A. Yes, I do.

Q. All right, did you tell Mr. White that?

Mr. Garrett: May that question be answered yes or no?

Mr. Nicoson: You may answer that yes or no.

A. Well, I can say no to that.

Mr. Collins: In view of the answer of the witness, I now move the previous testimony concerning the fact that he [285] told Bob White to have the

(Testimony of Charles Spallino.)

Teamsters assemble on the following morning be stricken from the record.

Mr. Nicoson: Well, I think that I would oppose that on two grounds, one that he has testified that he is in charge of the department, and two, he has testified very clearly that it originated in Mr. Collins' office, and pursuant to a plan originating in Mr. Collins' office, he was putting it into execution.

Trial Examiner Kent: The only thing is the witness' testimony did not seem that to me. His testimony was that insofar as he knew, White was in charge of the shipping department.

Mr. Nicoson: What else can a witness testify to, except so far as he knows.

Trial Examiner Kent: What does it mean?

Mr. Nicoson: That is a matter of cross examination, your Honor.

Mr. Collins: I don't think—we don't intend——

Mr. Nicoson: You test the witness' knowledge on cross-examination. You don't do that here.

Trial Examiner Kent: It still to my mind doesn't indicate the point of the supervisor in the shipping department, it is substantially a guess that he is.

Mr. Collins: May I have a ruling on my motion?

Trial Examiner Kent: I will sustain the motion to [286] strike.

Mr. Nicoson: May I have the motion read?

Trial Examiner Kent: I think I will have to reverse my ruling, in view of the witness' testimony. He testified he told White he got those instructions

(Testimony of Charles Spallino.)

or was transmitting a request from Mr. Collins. That, I think, possibly does not require that White be a supervisor.

Mr. Garrett: There is no such testimony in the record, according to my notes.

Mr. Nicoson: Are we going by Mr. Garrett's notes or are we going by the official transcript?

Mr. Garrett: I challenge you to show me——

Trial Examiner Kent: Challenge the record.

Mr. Nicoson: Don't challenge me. I didn't raise it.

Trial Examiner Kent: Challenge the record. Read his prior answer in reference to the statement concerning Mr. Collins.

(The record was read.)

Mr. Tyre: There was something after that. [287]

(The record was further read.)

Trial Examiner Kent: I don't see the reference to Mr. Collins I thought was in there—I might be confused on something else—you pointed out in or about this testimony.

Mr. Nicoson: Sir?

Trial Examiner Kent: The testimony that he was relating about making this request, of Mr. Collins. I have a faint recollection that was in there. It doesn't seem to be in there.

Mr. Nicoson: The witness' testimony is this:—I will stand on the record—that in the meeting with Mr. Collins and the AFL representatives, which he mentioned, and particularly the Teamsters, the

(Testimony of Charles Spallino.)

plan was hatched for a meeting of the shipping department employees.

Mr. Spallino undertook at that time and place to arrange such meeting, and pursuant to that plan it was conceived right in Mr. Collins' presence, and so far as the record shows, without any adverse comment by him, that Mr. Spallino there put into execution the plan that was conceived in Mr. Collins' office.

Mr. Garrett: I believe the testimony to which Mr. Nicoson refers doesn't refer to this shipping department meeting, and is the testimony that this man gave when he said that he arranged there in the meeting in Collins' office to have a general meeting for Roberts of the Stove Mounters to [288] to be held at Main and Griffin Avenues. Obviously the shipping department meeting, the following morning, isn't the one to which the testimony alluded.

Mr. Nicoson: May I respectfully differ with counsel as to the witness' testimony? The witness testified about his participation in arranging for two meetings, one at the corner of Griffin and Main, and the second was with the shipping department employees.

His first testimony was about the fact that he knew the fellow that had the place at Griffin and Main. I am not sure. He testified he would arrange to get this hall to hold the meeting for the AFL. He testified there was the conversation about the shipping department employees and that in the

(Testimony of Charles Spallino.)

presence of those assembled he undertook to arrange a meeting of the shipping department employees so that the Teamsters' representative could come down and talk to them. He did that upon the request of the Teamsters' representative as to how the employees in the shipping department stood. I think that is a correct summation of his testimony.

Trial Examiner Kent: Well, it is a little too deep for me, offhand. I will reserve my ruling now, pending a consideration of the record, and reverse my ruling on Mr. Collins' motion to strike.

Mr. Nicoson: I will ask Mr. Collins if he will stipulate R. J. White is the supervisor of the shipping department. [289]

Mr. Collins: I will stipulate, Mr. Nicoson, that stipulate R. J. White is the supervisor of the shipping department, but not—I don't know what you mean by a supervisor.

Mr. Nicoson: I will be content with that.

Trial Examiner Kent: What is that?

Mr. Nicoson: He will stipulate that R. J. White is the foreman of the shipping department.

Trial Examiner Kent: What is the nature of his duties, Mr. Collins? Does he do manual work himself there?

Mr. Collins: I was attempting to expedite the matters here. It has been called to my attention we don't even have a shipping department. We have a receiving department.

Mr. Nicoson: You do have Mr. R. J. White; do you not?

(Testimony of Charles Spallino.)

Mr. Collins: Let me confer with somebody here.

Reference in the record has been called to my attention that Mr. White is the shipping department. He is the whole thing; he is it. He is the foreman and crew; his own boss.

Mr. Nicoson: Well, I am content to accept the stipulation as to his being the foreman. I can't stipulate he is the whole crew because I think the evidence will show he wasn't.

Mr. Collins: The situation is this, Mr. Nicoson: O'Keefe and Merritt haven't made anything since the war. They stopped last August. There is nothing to ship. They will be in production on stoves soon, we hope.

Trial Examiner Kent: Well, what is the present status [290] of the stipulation?

Mr. Nicoson: Well, I stated that I was willing to accept his stipulation that R. J. White was the foreman.

Mr. Garrett: I will object to the stipulation. He couldn't be foreman with no one under him.

Trial Examiner Kent: What is your objection?

Mr. Collins: Inasmuch as I would like to extend this courtesy to Mr. Nicoson, I find I can't so stipulate because there is no department he could be foreman of.

Trial Examiner Kent: There wasn't at that time he has testified to?

Mr. Collins: I am basing my remarks on the statement of my clients there is no department there, at that time they are talking about.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I will grant the motion to strike then.

Q. (By Mr. Nicoson): At that time, Mr. Spallino, had you ever had occasion to go into the shipping department?

A. Yes, at the door. It said, "Shipping". I think that was shipping department.

Q. Did you ever have occasion to go in there?

A. Yes.

Q. How often would you go in there?

A. Well, I tell you, I went there at will; in fact, Johnny Levascos was in there on one trip with me.

Q. How often would you go in there, did you say? A. At will.

Q. Well, how often is "at will"?

A. Well, for two or three days I think we were in there. Johnny Levascos was in there several times with me, two or three days. I think we made four or five trips in there.

Q. Did you, after this meeting in Mr. Collins' office, go into this room marked "Shipping"?

A. Shipping department? Yes.

Q. Did you there see Mr. R. J. White?

A. Yes.

Q. Did you see anyone else in there?

A. Well, there was Jack Miles, he happened to be in there. He is one of the truck drivers. I don't recall all the boys' names.

Q. Did you see anybody in there? A. Yes.

Q. Approximately how many did you see in there?

(Testimony of Charles Spallino.)

A. I would say about four fellows in there, four or five.

Q. Did you see what they were doing?

A. Well, they were waiting, waiting for 8:00 o'clock.

Q. Would that be before working hours?

A. Yes.

Q. Had you ever gone into the shipping department during working hours? [292] A. Yes.

Q. Had you seen anyone in the shipping department, other than Mr. White?

A. Well, his assistant. I can't recall his name.

Q. Anyone else?

A. There is a boy there that does the delivery of the receiving material that is received. He brings it into the departments; I can't recall his name.

Q. Was there anyone else you saw in there?

Mr. Collins: I move the last answer be stricken because it obviously is not responsive to the question of counsel. He stated the man in there now does the receiving. The attempt, as I understand it, is to substantiate the fact Mr. White is head of the shipping department. Now we are having somebody that does some receiving as being—it is alleged he is now White's assistant, when, as a matter of fact, his own testimony now is he is the receiving end of it, instead of the shipping end of it.

The Witness: May I answer that?

Mr. Nicoson: Strike the question.

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): On the occasion that you have testified that you have been in this room "Shipping", have you ever seen more than Mr. White in there? A. Yes, the whole crew.

Q. How many is in the whole crew? [293]

A. At that time I could say about eight.

Q. Did you ever see what they were doing during working hours?

A. Yes. They do delivering and receiving.

Q. Now, what do you mean by delivering and receiving?

A. They still have—had delivered generators.

Q. Just answer the question. What do you mean by delivering and receiving?

A. I see material going out and I see material coming in.

Q. What did these employees or these persons have to do, if anything, with the material going in or the material going out?

A. Well, the truck driver—naturally he loads his truck if he has any material to take out, such as generators, which they have. They are still making generators now.

Q. Were all of these people you talk about as the whole crew teamsters?

A. Teamsters? Yes.

Mr. Collins: Mr. Trial Examiner, I would like—

Mr. Nicoson: Just a second, please.

Q. (By Mr. Nicoson): Do you understand that question? Did you listen to it?

A. I will have to hear it again.

(Testimony of Charles Spallino.)

Mr. Nicoson: Will you put the question and then Mr. Collins has an objection. [294]

(The record was read.)

The Witness: Well, they are truck——

Mr. Collins: Just a moment. I object at this time to this line of testimony. This witness is not competent to testify to this. He obviously don't know the difference between the shipping department and the receiving department. He is not qualified to answer the line of questioning being put to him. We are just confusing the record and not getting anything——

Mr. Nicoson: Strike the question.

Q. (By Mr. Nicoson): If you know, of your own knowledge, were these persons you have described as being the whole crew teamsters?

A. They are truck drivers. Some of them work on the floor. As far as I know, as long as I have worked there, that has been the shipping department.

Mr. Collins: May I take this witness on voir dire?

Mr. Nicoson: Wait until he finishes the answer and you can do what you like.

Q. (By Mr. Nicoson): Have you finished your answer?

A. The truck drivers and the fellows off the floor, like I said a while ago, one of the fellows in the office at the time is the fellow that does the delivering of the receiving material that is received. He delivers it from department to department,

(Testimony of Charles Spallino.)

wherever the material is going to. As long as I have worked there I know that is the shipping department, it has been the shipping department, it has still the sign of "Shipping Department." They have done receiving there, because that is the only place there, and in the back end is where they do all the receiving. [296]

They don't have an office in the back. There is a sheet metal, all steel and materials go in the back door. It is all done right in one place at the front of the building.

Mr. Collins: Mr. Spallino, do you know, of your own knowledge—I mean of your own knowledge, not something you just suspect or something you have heard somebody say around the place—do you know, of your own knowledge, whether Mr. Anderson is the head of the receiving department or whether Bob White is the head of the receiving department?

The Witness: I would say Anderson.

Mr. Collins: Do you know? Yes or no. The next question I am going to ask you is how you know. I want to get the answer straight, before you start.

The Witness: I will tell you I don't know.

Mr. Collins: That is all.

The Witness: Things change overnight in that place.

Q. (By Mr. Nicoson): Were these persons whom you described as the whole crew, with the exception of those you have termed as truck drivers,

(Testimony of Charles Spallino.)

working in this room which you have described as the shipping, or shipping department?

A. Yes.

Mr. Collins: Objected to as immaterial; not tending to prove or disprove anything at issue.

Q. (By Mr. Nicoson): I will ask you if you know whether or not these persons that I have just spoken about work with Mr. [297] R. J. White.

A. They work with him?

Q. Yes. A. He is the boss.

Mr. Collins: Just a moment. If the court please, I move to strike out this statement of the witness unless he now wishes to change his testimony on voir dire, in which he stated he didn't know who was the boss of these departments.

Mr. Nicoson: No, he didn't; he didn't. He merely said he didn't know whether Anderson was head of the receiving department. That was all you asked him. You didn't even mention White's name.

Mr. Collins: Miss Reporter, will you read the questions I propounded to this witness and his answers?

(The record was read.)

Mr. Nicoson: I guess maybe I owe counsel an apology. He did mention Mr. White.

Mr. Collins: I accept the apology, Mr. Nicoson.

Mr. Nicoson: I suppose I was asleep there and let you put that two-pronged question to the witness. Very well. I will just have to recall him after a further witness. That is O.K.

(Testimony of Charles Spallino.)

I take it your Honor has ruled I can't go into that meeting there on account of the position that White has has not, to your satisfaction, been established. [298]

Trial Examiner Kent: I seem to have a misunderstanding of the record. If the record did show that Mr. Collins requested—or there is a reasonable fair inference Mr. Collins requested him to contact some of those people and arrange for meetings, why, I think the testimony would be admissible.

Mr. Nicoson: I offer to prove by this witness, if he were permitted to answer, that he would testify that Robert J. White is the foreman of the shipping department; that pursuant to his meeting with Mr. Collins and the A.F.L. persons which he mentioned in the room at that time he went to Mr. White and he told him, he requested him to assemble the employees of the shipping department, including the drivers, for the purpose of letting Mr. Blaney, a representative of the Teamsters' Union, speak to them concerning organizing them and having them signed up in the Teamsters;

That Mr. White did arrange such a meeting just prior to working hours of these employees directly outside of the door of the shipping department; that a representative of the Teamsters, the name of which is unknown to the witness, did meet with these employees in the presence of R. J. White;

That the representative of the Teamsters' explanation and discussion with the employees was incon-

(Testimony of Charles Spallino.)

clusive and unsatisfactory to the employees, and that the witness thereafter arranged for a further meeting a day or so following, at which time Mr White again assembled the employees outside [299] the shipping department door, and this meeting was attended by a Mr. Blaney of the Teamsters, at which Mr. Blaney told them about the Teamsters, work of the Teamsters, and then and there in the presence of Mr. White solicited and did obtain members into the Teamsters' organization.

Mr. Collins: To which offer of proof, on behalf of respondents O'Keefe & Merritt, I object on the ground it is assuming a fact not in evidence. This witness has just testified he doesn't know what Bob White's position was, or in substance he didn't know.

On behalf of the respondent Pioneer Electric Company and the co-partners and members thereof, I object upon the ground that it is not binding upon them, because there is no showing that any representative of theirs was at any of these meetings, either at the meeting that counsel is referring to or at the meeting alleged to have been called in my office.

Trial Examiner Kent: This meeting was held outside of the plant property, was it, or was it not? In your offer of proof you said outside the door of the shipping department.

Mr. Nicoson: That is right.

Trial Examiner Kent: You mean in the plant proper, or outside?

(Testimony of Charles Spallino.)

Mr. Nicoson: On the public street.

Trial Examiner Kent: Have you other testimony to offer?

Mr. Nicoson: Beg your pardon? [300]

Trial Examiner Kent: Have you other testimony to offer that White had supervisory authority there?

Mr. Nicoson: I would like to read into the record——

Mr. Collins: May we have identified what you are reading from?

Mr. Nicoson: Oh, definitely, if you will just wait.

Mr. Collins: Before you read from it.

Mr. Nicoson: Yes, before I read from it you will find out what it is. From the official transcript in the matter of O'Keefe and Merritt Manufacturing Company and O'Keefe and Merritt Division, Local 2018, affiliated with United Steelworkers of America, C.I.O., Case No. 21-R-2298, at a hearing before the National Labor Relations Board, held at Los Angeles, California, on March 29, 1944, page 26, being the testimony of Fred F. Rotter. I will also read from page 25 in order to show who Rotter is.

Mr. Garrett: I object to reading from the transcript in another case.

Mr. Collins: It is not the best evidence. It is the rankest kind of hearsay. There would be no opportunity to correct the testimony that is about to be read if permitted to be read in evidence. There

(Testimony of Charles Spallino.)

is no showing it is possible not to get Mr. Fred Rotter down here himself. I can have him down here in a half hour, if you want to question the man.

Trial Examiner Kent: I think that might be the most regular way to put the testimony in.

Mr. Nicoson: I submit the Board takes judicial knowledge of its own proceedings. If I am precluded I would like, by way of an offer of proof, to read——

Mr. Collins: I am not through with my objection, Mr. Trial Examiner. In addition to which I object upon the ground there is no representative of the O'Keefe and Merritt Company, that is, counsel here, to correct the purported testimony they are about to read from a book here. There is certainly no representative of these various A.F.L. locals here. It is the most highly irregular thing to be imagined, not to even stand by the technical rules of evidence. It is the most unfair thing I can imagine.

Mr. Garrett: I am going to object generally to reading into the record from the proceedings in another case on the pretense of making an offer of proof. Evidence in another case is purely hearsay here by a witness whom I didn't have the right to cross-examine or the opportunity to cross-examine, and under the circumstances where there is no showing that the witness can't be produced here to take his place on the stand to testify under oath in this proceeding and submit to cross-examination.

Trial Examiner Kent: I think, in view of Mr.

(Testimony of Charles Spallino.)

Collins' offer to produce that witness here, we should take the [302] testimony that way.

Mr. Nicoson: Very well. I offer to prove, if permitted to read into the record, that the transcript that I have heretofore described will reveal on pages 25 and 26 the following:—

Mr. Garrett: May I have a ruling on my objection to Mr. Nicoson being permitted to read into the record testimony in another case, as it is a denial of due process to my clients in this proceeding. That is not a proper offer of proof, and I think everyone here knows it.

Mr. Collins: I wish to join Mr. Garrett in the objection. I wish to further object on the ground there is no necessity to make this offer of proof. We will produce the witness.

Trial Examiner Kent: I will sustain the objection. I will suggest that the witness that testified at that time be brought down, in accordance with Mr. Collins' offer.

Mr. Nicoson: Very well. Your Honor, I would like now to ask permission for the reporter to take as a rejected exhibit portions of pages 25 and 26 of this transcript, which I have heretofore identified.

Mr. Collins: I object to the introduction of the same in evidence on the grounds heretofore stated.

Mr. Garrett: Objected to as being taken in as an rejected exhibit and being placed in this record. Anyway, [303] it is hearsay.

Mr. Nicoson: I don't suppose counsel can dictate

(Testimony of Charles Spallino.)

to me how I make my record. I don't try to dictate to him.

Mr. Collins: I make an objection.

Mr. Nicoson: I think perhaps I have as much right and interest in making this record as anyone here. Your Honor has refused to accept it in evidence. I have a right to put it in the record to show what your Honor has refused to accept in evidence.

Trial Examiner Kent: I think you have. If you want to make a written offer of proof——

Mr. Nicoson: I would like to. Reading from page 25——

Mr. Garrett: May I have a ruling on my objection? This isn't good, putting it in as a rejected exhibit.

Trial Examiner Kent: I will sustain the objection. I will let you submit a written offer of proof.

Mr. Nicoson: In other words, you are saying I can't read this now?

Trial Examiner Kent: Yes.

Mr. Nicoson: As a rejected exhibit?

Trial Examiner Kent: Yes.

Mr. Nicoson: It has to be reduced to writing?

Trial Examiner Kent: No. I see no reason why it can't go into the record as a rejected exhibit.

Mr. Garrett: Your Honor, that is the same as testimony. [304]

Trial Examiner Kent: We will take a short recess and you can submit it to the reporter and

(Testimony of Charles Spallino.)

she can copy it into the record as a rejected exhibit.

Mr. Collins: You might as well let Mr. Nicoson testify.

Mr. Nicoson: Very well. I will indicate the portions that I would like to have the reporter copy into the record, and I now hand her a copy of the official transcript of the proceedings I have heretofore identified, and direct her attention to page 25 and page 26, and it carries on over on page 27. I have marked on the outside with red pencil the portions I would like to have copied into the record.

I think this perhaps is very improper, because it puts upon the reporter the burden of putting in the record that which I deem my duty to do.

It is her responsibility and if any mistake is made, then I didn't read it into the record, she copied it and she copied it wrong. I think that is an unwarranted burden to put on the reporter. If that is your ruling I will bow to it.

Trial Examiner Kent: Let me ask a further question. This was the record made, was it, in the case in which the petition was filed by the C.I.O. in the consent election?

Mr. Nicoson: No.

Trial Examiner Kent: It was not?

Mr. Nicoson: No. [305]

Trial Examiner Kent: All right.

Mr. Garrett: What is this record from, may I ask?

Mr. Nicoson: This is the record in Case No. 21-R-2298. There is outstanding a formal decision

(Testimony of Charles Spallino.)

of the Board rendered in this matter, issued by the National Labor Relations Board on the 29th of April, 1944, by Harry A. Millis, Gerard P. Reilly, John M. Houston, members of the National Labor Relations Board. It is an official decision based upon that particular record.

Mr. Garrett: That shows in point of time it had no relation to this meeting that this witness is purporting to testify about, which occurred in October, 1945, well over a year and a half after the decision had been rendered in this R case to which counsel alludes. I don't even know who the parties to it were. How could anyone's testimony as to his status in April, 1944, have any bearings on what his capacity was in October, 1945? I object to this being physically in the record.

Trial Examiner Kent: It is in the record as a rejected exhibit. It is not in as a formal exhibit.

Mr. Garrett: Can't it go in with the exhibits, rather than being a physical portion of the record?

Trial Examiner Kent: It is in a copy of the general records in Washington.

Mr. Garrett: There is no foundation which stands. [306] There is nothing to show that it has any materiality to this situation. It is an offer, in my opinion, that is not made in good faith, if your Honor please. Here is an offer of proof, offered this court, as relating to the foundation for a conversation attempted to be adduced here dated a year and a half after the conclusion of the very

(Testimony of Charles Spallino.)

proceedings that counsel is trying to get physically into this record.

Mr. Nicoson: Have you finished, Mr. Garrett?

Mr. Garrett: Although I will ask your pardon if I made any misstatements.

Trial Examiner Kent: We might proceed.

(The following is incorporated as a rejected exhibit.

“FRED F. ROTTER,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

“Direct Examination

“By Trial Examiner O'Brien:

“Q. I would like to have you state your name so that everyone can hear it.

“A. Fred F. Rotter.

“Q. And your address?

“A. 2212 Townley Drive.

“Q. What is your position?

“A. Employment and assistant personnel man at the O'Keefe & Merritt Manufacturing Company. [307]

“Q. Was Board's Exhibit No. 3 prepared under your supervision?

“A. You are referring to this list of employees?

“Q. Yes. A. Yes.

(Testimony of Charles Spallino.)

“Q. In general, I can get at this by a large number of direct questions, but if it is possible for you to tell us who the general manager of the company is, and so on down the line, and what departments there are, who is in charge of each department, and so on, it would be much better.

“A. Mr. D. P. O’Keefe is president. Mr. R. J. Merritt is treasurer and secretary. Mr. W. J. O’Keefe is plant superintendent.

“Q. Is Mr. W. J. O’Keefe in charge of operations there? A. Yes.

“Q. Who are the supervisors immediately under him, and what are their duties?

“A. The various supervisors under Mr. W. J. O’Keefe is M. S. Smith, assistant plant superintendent, and the following foremen in the respective departments: R. J. White, shipping department; William Wheeler, manager of production in the generator unit department; Richard Carno, foreman of the paint department; [308] R. Reinicke (foreman of the impregnation and balancing department; Gus Aschieris, foreman of the press department; S. J. Hamilton, foreman of the tool room department, and machine production department; Manual Ortega, foreman of the shear department; and L. Matranga, foreman of the foundry department.’’)

(Testimony of Charles Spallino.)

Q. (By Mr. Nicoson): Mr. Spallino, you recall about having testified about the time you were in Mr. Collins' office and the A.F.L. people were there, with relation to the hall at Griffin and Main. Do you recall testifying about that? A. Yes.

Q. After that meeting, did you do anything about the hall at Griffin and Main? A. Yes.

Q. What did you do?

A. I went to the telephone and called Griffin and Main, that is, the proprietor there. His name is Carman Testa. I asked him if the hall was available; it was on a Wednesday night. He said, "Sure." He said I could have his hall for that Wednesday night. [309]

Q. And thereafter did anything in connection with the hall occur?

A. Well, the leaflet was out that the meeting was to be held at the Griffin and Main Cafe that night at, I think it was 8:00 o'clock.

Q. What meeting?

A. The A. F. of L. Well, it was an organizing meeting.

Q. Was such a meeting held? A. Yes.

Q. Did you attend the meeting at Griffin and Main you have just described? A. I did.

Q. Did you see Mr. Blaney there?

A. He was there.

Q. Did you see Mr. Lazzerini there?

A. Not the first meeting.

Q. How many meetings were held there, if you know?

(Testimony of Charles Spallino.)

A. We had two meetings, and then one initiation meeting.

Q. At this first meeting, were applications in any of the A. F. of L. organizations passed out to the persons assembled? A. Not that I recall.

Q. Pardon me. Did you say you had a conversation with Mr. Blaney that first night?

A. Well, yes, I had conversation with several of the fellows there, I was introduced to each one that were there. [310]

Q. Did you have any conversation with Mr. Blaney concerning the boys in the shipping department?

A. Yes, because the showing was not very good there that night, there were only about 28 fellows that attended the meeting, and well, he asked me about the shipping department, how the boys stood over there, and you see the first—can I go back now?

Q. No, you better stay right on this meeting.

A. Well, that the boys didn't quite understand a whole lot about different scales, union scale of truck drivers, and that the boys, that was the second meeting, that Blaney came up to the plant.

Q. Well, before Blaney came to the plant, you had attended this meeting with him, had you or had you not?

A. Well, I did talk to him *on* Collins' office the first time.

Q. Well, did the meeting occur before you talked to him in Collins' office or afterward?

(Testimony of Charles Spallino.)

A. One of the meetings at the shipping—

Q. No, the meeting in Griffin's Hall.

A. No, that was afterwards.

Q. How long afterward?

A. Oh, I would say within—well, it was the Wednesday following. I don't remember the date. I know it was within two or three days, I would say.

Q. I believe you said you did not talk to Mr. Lazzerini the first meeting?

A. No, he wasn't there.

Q. Was he present at the second meeting?

A. He was.

Q. When was the second meeting?

A. That followed, the following week.

Q. Did you talk to Mr. Lazzerini at that time?

A. Yes, I—

Q. Did you have anything to say to Mr. Larzerani concerning the employees of the shipping department?

A. To Mr. Lazzerini concerning the shipping department, no.

Mr. Collins: May we go off the record a moment here?

Trial Examiner Kent: We will take a recess for five minutes.

(Short recess.)

Trial Examiner Kent: You may proceed.

Mr. Nicoson: Well, we have got a couple of absent members.

Trial Examiner Kent: You may go ahead.

Q. (By Mr. Nicoson): Do you know, Mr. Spal-

(Testimony of Charles Spallino.)

lino, a man by the name of Rotter? A. Yes.

Q. Do you know what his first name is?

A. Fred. [312]

Q. Do you know what his business or occupation is? A. Well, he is the personnel manager.

Q. For what concern or company?

A. Well, he could be representing both companies, I guess.

Q. What do you know him as?

A. Well, O'Keefe & Merritt.

Q. Did you at any time attend any meeting in which Mr. Rotter was present? A. Yes.

Q. Where was that meeting held?

A. In Collins' office.

Q. Is that the same Collins office you have been talking about? A. Yes, Cecil Collins.

Q. Who else was present?

A. Joe Spallino and Johnnie Levascos.

Q. Is Joe Spallino the same person whom you have previously identified as your brother?

A. Yes, he is my brother.

Q. At the time of this meeting, do you know what position Mr. Joe Spallino held, if any?

A. Superintendent.

Q. Of what? A. O'Keefe & Merritt.

Q. Now, when did this meeting occur? [313]

A. When?

Q. Yes.

A. That was within—let's see. It was around October, I would say, near the election, within a—

(Testimony of Charles Spallino.)

Mr. Nicoson: Can we stipulate that the election was held on November 20, 1945?

Mr. Garrett: So stipulated.

Q. (By Mr. Nicoson): Now, with relation to the election, was it before or after?

A. It was before.

Q. How long before?

A. I would say within two weeks, or between that.

Q. What was said at that time and place and who said it?

A. Well, I began, I began the conversation that I was—well, I had too much on my hands, I was doing a little too much running around at this campaign for the A. F. of L., and my other duties, that I was as local president, and I told them that was too much, and I thought I was not really getting anything for all that extra work, and it was just a little too much for me, and I think that Mr. Collins made a crack that if I was afraid——

Mr. Collins: Just a moment. I move that that characterization of the witness, a crack, be stricken from the record.

Mr. Nicoson: I join with counsel.

Trial Examiner Kent: Yes. Try to always state what the [314] other person said and what you said, because after all somebody else has to draw the conclusions as to what they meant.

Q. (By Mr. Nicoson): What did Mr. Collins say?

(Testimony of Charles Spallino.)

A. He said, "You are not afraid to stick your neck out. If you want to better yourself, you are working with Joe Spallino there, he could easily give you a nickel or a ten-cent raise. There is Fred Rotter right there," he says, "Why don't you give your brother a 10-cent raise?"

Q. Anything further said on that subject?

A. Well, Joe and Fred was going to take that up, and in the meantime there was a phone call comes over the phone.

Q. A phone call, what about the phone call?

A. Well, from what I gathered on the conversation——

Q. Who talked on the telephone, if anybody?

A. Collins was at the phone.

Q. All right.

A. And he put his hand over there for a little while and said it was John Despol on the phone.

Trial Examiner Kent: Who is he?

The Witness: John Despol? John Despol is the CIO representative.

Q. (By Mr. Nicoson): And did you hear anything that Mr. Collins said to Mr. Despol or to the person on the telephone?

A. Yes, there was a question there whether we were organizing the A. F. of L. on company time.

Q. Did anybody say anything about that?

A. Well, he says——

Q. What do you mean, who is he?

A. Collins.

(Testimony of Charles Spallino.)

Q. You see, we can't get that in the record if you point to somebody and say he.

A. Collins, he suggested that he would get the superintendent of the plant and the personnel man there to find out if there is anyone going around on company time signing up the A. F. of L. fellows on company time, and at that time Joe Spallino and Fred Rotter were sitting in the same room with Collins and Levascos, Fred Rotter and Joe Spallino and myself. [316]

Q. Did Mr. Collins say anything further over the telephone that you heard?

A. Well, the conversation really got to where Johnny was taking up too much of his time.

Q. No, no, over the telephone.

A. Over the telephone, and that was the conversation over the telephone, and he held the phone there pretending that he was calling Joe and Fred Rotter to the office. In the meantime we were talking. And he says, "Well, if we catch any of our boys on Company time signing any A. F. of L. men we will lay them off for two or three days.

Q. Who did he say that to?

A. He was talking to John Despol over the phone.

Q. Anything further said?

A. And Collins made a statement to Levascos and myself, "There is a good chance to get two or three days vacation."

Q. Did he explain that?

A. He did say that.

(Testimony of Charles Spallino.)

Q. Did he explain what he meant by that?

A. Yes, well, if Joe Spallino or someone would catch us in action, then we could take two or three days vacation with pay.

Q. And did Mr. Collins have anything further to say to the person on the telephone that you now recall?

A. Well, it was more of a little joke here and there, [317] and Johnny was taking up too much of his time, so he told Johnny to please get off the wire and go ahead and do something else, that he had business to attend to, and that was about all.

Q. Was or was not anything said by Mr. Collins to the person on the telephone as to whether or not Mr. Collins would take any action?

A. Towards the organizing during Company time?

Q. Did he say anything in that respect over the telephone? A. Yes, well——

Q. What did he say?

A. I already said that, didn't I?

Q. Didn't you understand the question, sir?

A. Will you repeat that?

Q. Was or was not anything said by Mr. Collins over the telephone with respect to whether or not Mr. Collins proposed to take any action?

Mr. Collins: Objected to as having been asked and answered.

Mr. Nicoson: I would like to finish the question, if you don't mind.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Have you laid a foundation? I don't think you have.

Mr. Nicoson: Sir?

Trial Examiner Kent: Refreshing the man's recollection [318] again.

Mr. Collins: I distinctly remember the witness saying that I told Mr. Despol that if we caught anybody organizing on Company time they would be given a two or three day layoff without pay, and these fellows could get a vacation with pay, or something like that.

Mr. Nicoson: That is right. I am trying to find out if anything else was said.

Q. (By Mr. Nicoson): Was anything else said that you now recall by Mr. Collins to the person on the telephone at that time and place

A. Not that I can recall.

Mr. Nicoson: May I have the answer?

(The answer was read.)

Q. (By Mr. Nicoson): Was or was not anything said by Mr. Collins to the person on the telephone at that time and place with respect to stopping such activity if it existed?

A. Oh, yes, he promised Johnny that he would see that that would not happen during Company time, that he didn't know anything like that was going on.

Q. Did or did not Mr. Collins tell you to continue or cease your efforts on behalf of the A. F. of L. at that time and place? A. No.

Mr. Collins: Just a moment. Now I move that

(Testimony of Charles Spallino.)

the entire [319] line of testimony of this witness be stricken upon the ground it does not tend to prove or disprove anything at issue. The witness has stated that I did not tell him to do anything by way of stopping organizing activities on behalf of the A. F. of L. Surely counsel does not intend to prove by this line of testimony that I would have the right to stop the A. F. of L. from organizing that plant, does he? If I had done that, instead of having the CIO as a moving party it would mean the A. F. of L. is the moving party here, claiming that I was interfering with their rights of organization of the factory.

Mr. Nicoson: I think the witness' testimony is all proper, quite relevant and material to the issues framed by the complaint.

Mr. Collins: May I have a ruling on that motion, Mr. Examiner?

Trial Examiner Kent: Yes. The record may remain.

Q. (By Mr. Nicoson): It has been stipulated here that an election took place among the employees on November 20, conducted by the National Labor Relations Board. Did you at or about that time have another conversation with Mr. Collins?

A. Yes.

Q. In relation to the election, when did that occur?

A. About two days before the election. [320]

Q. And where did that conversation take place?

A. In Collins' office.

(Testimony of Charles Spallino.)

Q. Who was present?

A. Johnny Levascos and myself.

Q. Was Mr. Collins there?

A. And Mr. Collins.

Q. Just the three of you? A. That is all.

Q. What was said at that time and place and who said it?

A. Well, Mr. Collins had a leaflet or whatever you call it——

Q. Well, what do you call it?

A. I call it a little speech, that I being the president of the Five and Over Club could get this here pamphlet and have Mr. O'Keefe go over it first to see if there was any mistakes or any corrections that had to be made and for me to——

Mr. Collins: Just a moment.

Mr. Nicoson: I think he ought to be permitted to finish his answer.

Mr. Collins: He has answered that. Now just a moment. I move this witness be instructed to answer what was said and what he said and what I said.

Trial Examiner Kent: I think you'd better start over, and be careful to state what was said by the various parties, for instance, what was said by you and what was said by Mr. [321] Collins and if somebody else was present at the conversation and said something.

Mr. Nicoson: Your Honor, I have to protest——

Trial Examiner Kent: To the best of your recollection.

(Testimony of Charles Spallino.)

Mr. Nicoson: I have to protest the interposing objections in the middle of an answer. Now, the question was all put, counsel has time enough to put his objection in, and the witness should be permitted to answer his question in full, and if it is improper a motion to strike will lie. That is the recognized practice, even in the police court.

Trial Examiner Kent: The witness is inclined to testify as to his conclusions.

Mr. Nicoson: Very well, if he testifies improperly a motion to strike will lie. That is common practice.

Trial Examiner Kent: No, I think the proper way is for the witness——

Mr. Nicoson: Then there has been time after time that this poor witness has been interrupted by counsel all through his testimony right in the middle of an answer, regardless of what he is saying or for what purpose. I protest very vigorously against such treatment and I protest to you as presiding officer that that is improper.

Trial Examiner Kent: Read the answer the witness has given so far.

Mr. Collins: I submit that Mr. Nicoson's statement is [322] not a true statement of the law of evidence, even in a police court, and most certainly not before this tribunal which is a branch of the United States. I think when a witness is testifying improperly you have to interrupt him whenever you have a chance to interrupt him.

Mr. Nicoson: I submit, your Honor, that counsel

(Testimony of Charles Spallino.)

for the other side has no right to interrupt the witness in the middle of an answer under any circumstances.

Trial Examiner Kent: I think he has if the witness is testifying as to a conclusion.

Mr. Nicoson: I disagree with you.

Trial Examiner Kent: Read the answer.

Mr. Collins: If he is stating that is what was said, then I will stipulate that the matter should be left in there, but it is the rankest sort of conclusions by this witness. Nothing could be a more perfect example of what was wrong with the witness doing on the stand.

(The answer was read.)

Trial Examiner Kent: Was that what you actually said?

The Witness: That is right.

Trial Examiner Kent: Very well. You may finish your answer.

The Witness: What was the last I had there?

(The answer was read.)

The Witness: In the meantime Collins—well, Johnny [323] Levascos was already with me, and with Mr. O'Keefe, that is we came down before the following morning—I am getting a little ahead of myself.

Q. (By Mr. Nicoson): You just stay right here at this time.

A. I am going a little ahead of myself. But Mr. Collins suggested that it would be a good idea being that the CIO—

(Testimony of Charles Spallino.)

Mr. Collins: Just a moment. I want this witness to testify what I said and what he said.

The Witness: This is what I said and you said.

Trial Examiner Kent: I think the word you used, word suggested, was a little misleading. If you are going to actually say what he said, all right.

The Witness: He is right in front of me, your Honor.

Trial Examiner Kent: I know, but nevertheless say what he said, not what he meant.

A. Well, Mr. Collins stated that being that the CIO has got a right to pass literature to their members at the employees' entrance, then the Five and Over Club would have the same privileges and it is up to the president of that Five and Over Club to have such literature pertaining against the CIO, that the CIO is not—well, it is a radical organization, that we could not profit by the CIO, and such words as that was in this literature, and he suggested, that is Collins, Cecil Collins suggested [324] that I show, that is Levascos and myself, to have Mr. O'Keefe, who is president of the O'Keefe and Merritt Company, to go over this little leaflet and to have it printed on the outside, outside of the plant. Usually the Five and Over Club used the lithograph in the plant in all literature and notices.

Mr. Collins: Just a moment. Did I tell you that, that usually the Five and Over Club used the mimeograph? This witness is getting out of the conversation.

(Testimony of Charles Spallino.)

The Witness: I am going way ahead, yes, I am telling the story. I am sorry. I am sorry I didn't know when to stop. I am telling the whole story.

Trial Examiner Kent: Well, I think that sort of amplification is proper anyway.

The Witness: So I made arrangements with Mr. Simmons.

Mr. Collins: Just a moment. I object to that and I move the answer be stricken as a conclusion of the witness, I made arrangements.

Mr. Nicoson: I agree it should go out.

Trial Examiner Kent: Try to avoid that. I know it is hard. Say actually what you said to Mr. Simmons, not that you made arrangements.

The Witness: We will get through with Collins first.

Q. (By Mr. Nicoson): Was Mr. Simmons there at that time. A. No. [325]

Q. All right. What else was there talk about in Mr. Collins' office?

A. Well, we were, that is all, to get that leaflet out and have it out just in—that is election morning, to have it out so that everybody would see it, would get it just before election, that we would have that leaflet out.

Q. Had you prior to that time had anything to do with this leaflet or speech or whatever it was?

A. I didn't have anything to do with it at all.

Q. Had you seen it before? A. No.

Q. Had you even heard about it before?

A. No.

(Testimony of Charles Spallino.)

Q. After this meeting with Mr. Collins, what did you do with respect to this leaflet, speech, or whatever you choose to call it, if anything?

A. Well, we came downstairs to the purchase agent's office, Mr. Simmons. I don't know his first name.

Q. Did you see Mr. Simmons? A. Yes.

Q. And did you talk to him? A. I did.

Q. Was there anyone else present besides Mr. Simmons and yourself?

A. Well, Johnny Levascos.

Q. Anyone else? A. No.

Q. What did you say, what did Mr. Simmons say, and what did Mr. Levascos say, if anything?

A. I asked Mr. Simmons if it would be possible to get a printer there sometime tomorrow, I had this leaflet that I had to show to Mr. O'Keefe and as soon as Mr. O'Keefe O.K.'d it that we would like to have it printed and printed fast so that we would have it before the election.

Q. Did Mr. Simmons make any reply to that?

A. Well, he said that he would contact the man, and that was all.

Q. Did you thereafter talk to Mr. Daniel P. O'Keefe?

A. The following morning Levascos and myself walked into Mr. O'Keefe's office.

Q. Was anyone else present?

A. Not at that moment.

Q. Did anyone else come in during the course of the conversation?

(Testimony of Charles Spallino.)

A. Mr. Cecil Collins came in.

Q. What was said at that time and place and who said it?

A. Well, we had this, that is I had it because I had it, I handed it to Mr. O'Keefe.

Q. You handed what? [327]

A. This thing that I called a speech or literature, and I asked him to go over it and see what he thought of it.

Q. Is that the same document you got from Mr. Collins? A. The same one.

Q. What did Mr. O'Keefe say if anything in reply to that?

A. He laid it on his desk and he started going over it and he scratched a few things there with his pencil, a few words there scratched out, finally it got so bad there that he finally called his secretary, I think he called her Mary.

Q. What did he do with his secretary, if anything?

A. Well, he started dictating to her the words that he wanted changed, and he got so far, then he says, "Well, it will sound too much like I am making the speech, so we'd better drop it," he says, "I will make a speech instead, I will talk to the boys myself." [328]

Q. Did you or Mr. Levascos make any reply to that?

A. Well, I told him that it was a good idea, that the boys always had listened to his speeches, that

(Testimony of Charles Spallino.)

they really had a lot of faith in him, and that it would be better for him to talk than to have me put this literature out.

Q. Did anything else transpire at that time or was said at that time? A. No, that was all.

Mr. Collins: All the witness' testimony I move be stricken upon the ground that it does not tend to prove or disprove anything at issue. Whatever was attempted to be done, Mr. O'Keefe stopped it. If there was some unfair labor activity started by Collins and Levascos and Spallino, it was stopped by the respondent company. I move that it be stricken.

Mr. Nicoson: I would not agree to that.

Trial Examiner Kent: The record may remain.

Q. (By Mr. Nicoson): Thereafter did Mr. O'Keefe make a speech or talk? A. He did.

Q. When did that occur, if you know?

A. That took place before noon.

Mr. Collins: I am willing to stipulate that Mr. O'Keefe made a speech to all the employees, and I will furnish the Board with a copy of the speech, if you care to accept that [329] stipulation.

Mr. Nicoson: When did he make it?

Mr. Collins: When, I don't know the exact date. I believe he made two speeches altogether. I will bring you copies of those if you want them. If you will accept the stipulation he made the speeches, I will bring them in.

Mr. Nicoson: I did not know that the matters

(Testimony of Charles Spallino.)

had been reduced to writing, and I will be glad to see them.

Mr. Collins: Well, the offer of stipulation is that I will bring in the two speeches verbatim.

Mr. Nicoson: I am not trying to be an obstructionist here, but I do not exactly want to bind myself to the contents of those speeches, but I do appreciate your courtesy in submitting that.

Mr. Collins: I will give you a general idea of those, if you would care to have me make the statement.

Mr. Nicoson: I would rather the statements came in and let me have an opportunity to look at them, and if it is what I think it is, then I can probably stipulate with you.

Mr. Collins: Very well, I will see if we can bring them in.

Mr. Nicoson: You are not able at the present time to stipulate as to the dates of those?

Mr. Collins: Well, I think one of them was the day before the election, and one of them was about a week, in other [330] words, one of them would be somewhere close to——

Mr. Nicoson, one of the speeches would have been, if the election was held on November 20th, which as I recall the date was, one of the speeches was made on the 19th of November or the 18th or 19th, something like that.

Mr. Nicoson: The 18th was on Sunday.

Mr. Collins: It must have been on the 19th, and the other speech was about a week after the elec-

(Testimony of Charles Spallino.)

tion. I have a copy of them. The tenor of both was that he didn't like either union, but he thought the lesser of the two evils was the A. F. of L.

Mr. Nicoson: Well, just as a matter of record here, I think that he made three talks.

Mr. Collins: He made one speech—may we go off the record a few minutes here?

Mr. Nicoson: All right.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: I am willing to stipulate that Mr. O'Keefe made three speeches, one of them more in the nature of an announcement; one of them about approximately the 19th of November, and another one would be about a week after that date, and then the last one was made just a few days before the Pioneer Electric Company took over the leasehold interest in the plant, [331] which would have been about the 1st of February, around the 1st of February.

Mr. Nicoson: As I stated off the record to counsel, those dates and occurrences are according to my information. I appreciate his offer to bring in the speeches. I do not want at this time to bind myself as to the contents of those written documents, of course, until I have had an opportunity to look at them, but I do appreciate your offer and will be glad to receive them.

Mr. Collins: It will save you bringing a lot of

(Testimony of Charles Spallino.)

people to testify as to the contents of them, because I had men and I know you had. Everything he said was reduced to writing and he read off the written statement, and we kept the copies.

Mr. Nicoson: Would you further stipulate that at each of these meetings at which Mr. O'Keefe read from these records that there were approximately 200 to 250 employees present?

Mr. Collins: Yes, I will stipulate that there were at least that many, probably more. There are approximately 500 employees now. At the time of the election there were approximately 300 eligible to vote and at the present time there are over 500 eligible to vote.

Mr. Nicoson: That is my recollection. I think that the official record, the Board's records at that time will show that there were approximately 312 eligible to vote. [332]

Mr. Collins: And at the same time the Pioneer Electric Company had approximately 180 people who would have been eligible to vote if they had been called in for the election.

Trial Examiner Kent: Is that in addition to that 300?

Mr. Collins: Yes. Do you accept that statement, Mr. Nicoson? I don't mean you are not going to get the speeches in verbatim. I will submit them to you.

Mr. Nicoson: I just want to make sure that the record correctly states what I think I heard you say. I don't want to take an unfair advantage of

(Testimony of Charles Spallino.)

you. Talking about 180, I think you used a term which implied that they were also present at the speech.

Mr. Collins: No, the 180 were not present.

Mr. Nicoson: I don't think you meant that, but I think your language is susceptible to that interpretation.

Mr. Collins: The 180 were from the Pioneer. That was different.

Mr. Nicoson: They were not present at the speech, as far as you know?

Mr. Collins: They were not present at the speech. Is that stipulation accepted?

Mr. Nicoson: On this basis, that I am calling your attention to the fact that I reserve the right to look at the printed copies before I am bound by them.

Mr. Collins: Very well. [333]

Mr. Nicoson: As to dates and so forth, I accept that stipulation.

Mr. Tyre: You mean they are on O'Keefe & Merritt's payroll?

Mr. Nicoson: Yes.

Mr. Tyre: You are not accepting that stipulation as to the number of Pioneer?

Mr. Nicoson: The approximate number of persons that attended the speechmaking at these times. There may be more or may be less.

Q. (By Mr. Nicoson): Now, prior to the election, did the Five and Over Club have a meeting?

A. Yes.

(Testimony of Charles Spallino.)

Q. How did that meeting come about?

A. Well, right after Mr. O'Keefe's speech I was in the back end——

Q. Which speech?

A. This is the first speech, that we was just talking about, the first speech.

Q. The first speech, that is the one we stipulated occurred on November 19th? A. Yes.

Q. Go ahead. What happened?

A. I was asked to call a special meeting.

Q. By whom? [334]

A. Now, that could come from Fred Rotter, and it was suggested to Johnnie Levascos and I that we call a special meeting.

Mr. Collins: Just a moment. I move to strike out "It could come from Fred Rotter," as an expression by the witness.

Trial Examiner Kent: The witness may state what was said.

Mr. Collins: May we have that remark stricken, Mr. Examiner?

Trial Examiner Kent: Well, yes, that first remark may be stricken.

The Witness: Johnnie Levascos suggested that we should have a Five and Over meeting before the election, to have this meeting at 4:15. So at that time it must have been about 3:00 o'clock or somewhere around 3:00 o'clock, so we went into Collins' office and Collins, Cecil Collins, dictated a speech to me, and I told him that I as president

(Testimony of Charles Spallino.)

of the Five and Over Club was not going to make a speech to my members that voted me into office, that I was not going to take sides and it was not right for me to tell them which way to vote, that I would open the meeting and I would tell them what my personal feelings were, and then they could go ahead and vote whatever they wanted to. Johnnie Levascos volunteered to make the speech himself. So they went over the speech—— [335]

Q. (By Mr. Nicoson): What do you mean by “they”?

A. Levascos and Cecil Collins.

Q. Go ahead.

A. So, after this was all said, the time was near, after—well, about 3:30, we left Collins’ office and came downstairs and Levascos says, “Say, Charlie, I feel like we ought to have a shot of liquor, I think I will have a little more oomph.” So we got Johnnie’s car and we went two blocks, I rode about two blocks and we went to this cafe and we had a shot of whiskey apiece, and then we came back to the plant.

Mr. Collins: I move to strike the witness’ last testimony on the ground that it does not tend to prove or disprove anything at issue in this case, that part about going to a cocktail bar and buying a drink.

The Witness: Well, that was in the conversation.

Trial Examiner Kent: I can’t see the purpose of that in the record. Still, it may remain.

Mr. Collins: Well, it might be misconstrued as bribery. I think we better have it stricken.

(Testimony of Charles Spallino.)

The Witness: It was just to quiet nerves.

Q. (By Mr. Nicoson): Well, did you have a meeting of the Five and Over Club?

A. We did, at 4:00 o'clock, Johnnie——

Q. Just a minute. Do you know of your own knowledge whether or not any notice was given to the employees of the [336] meeting?

A. Yes.

Q. Do you know how the notice was given?

A. Through the foremen of each department.

Q. Who gave the notice, if you know?

A. Well, I gave some of the notices to different foremen, and Johnnie did to some foremen.

Q. About how many foremen did you give the notice to?

A. Well, the ones that were nearest to me. I could say the drill press foreman and——

Q. Who is that?

A. That is Frank Vacquero.

Q. Anyone else? A. And the press line.

Q. Is that a foreman?

A. Now, I can't recall the name of the foreman.

Mr. Collins: Mr. Nicoson, I am willing to stipulate that this man handed out notices of the meetings of the Five and Over Club to all of the foremen, or should have handed it to all of them. I am willing further to stipulate that that is the customary and usual method of calling meetings of the Five and Over Club.

Mr. Nicoson: And that in response to his request the foremen did so notify the employees that there

(Testimony of Charles Spallino.)

would be a Five and Over Club meeting that afternoon at 4:15? [337]

Mr. Collins: I will stipulate to that.

Mr. Nicoson: That you, Mr. Collins.

Q. (By Mr. Nicoson): You attended the meeting, was there a meeting at 4:15?

A. There was.

Q. And did you attend it? A. Yes, sir.

Q. And tell us what transpired at that meeting.

A. Well, I opened the meeting and I told the members that I had been working with the company for 19 years, and we had been fighting unions for the last—well, as long as I have worked there we never had a union, we always fought the unions, that now we had to have a union and it is up to us to decide what union we want, and it is up to you to use your judgment on which you think is the right union for you, so I says at this time Johnny Levascos is going to make a speech to you, and I presented the mike to him, to Johnny Levascos.

Q. Did Mr. Levascos make any remarks?

A. Well, the remark he made, that he was a union man, that is, Johnny Levascos made the remark that he belonged to the A. F. of L. several years ago, that he thought that the A. F. of L. was the best of the two unions, that the C.I.O. was a radical organization and that we—well, he said something about Collins telling him, he was just coming to Collins' office and Collins knows that Collins represents certain C.I.O. [338] unions, that he ought to

(Testimony of Charles Spallino.)

know that the C.I.O. couldn't get you anything, and I really don't remember the whole speech. I know just certain words were said.

Q. Where was this meeting held?

A. At the Five and Over Clubroom in the plant, that is the north or east end of the building.

Q. And about how many persons were present, if any?

A. Well, I would say there was better than 200 up there.

Q. What time did the meeting begin and what time did it close?

A. Well, we started the meeting at about 4:15 and had about two or three minutes from 4:30, because we had the time to get downstairs and the ballot boxes were already in order and the election was about to begin.

Q. Is there a regular quitting time for the employees at the plant?

A. There is.

Q. What is that time?

A. Well, there is a shift that gets off at 3:30, around that time, and a shift that gets off at 4:30 is regular time.

Q. Do you know what the shift that gets off at 3:30 is comprised of?

A. I don't understand that word.

Q. All right, strike it. I am not sure I understand it, either. You testified that there was a shift getting off at [339] 3:30. Do you know what employees or group of employees get off at 3:30?

A. The service department.

(Testimony of Charles Spallino.)

Q. The service department. Where is the service department located?

A. That is on the same end that the Five and Over Club is. That is—I don't know. I haven't got my directions, whether that is east or—it is on the corner of the building in front.

Q. Do you know at that time, of your own knowledge, approximately how many persons were in the service department?

A. Well, I would say roughly about 15.

Q. About 15. Was any deduction made in your pay for attending this meeting at the Five and Over Club? A. No.

Q. I believe you testified you were at that time president of the Five and Over Club? A. Yes.

Q. Does the Five and Over Club hold meetings from time to time?

A. Yes, meetings were held before that. We have our regular meetings on the second Thursday of each month.

Q. What are the hours that you hold the meeting, usually?

A. It is at 8:00 o'clock at night, unless we call it, like sometimes call it in the morning. [340]

Q. There has been intimated here that there was an election of the N.L.R.B. on November 20. Did you take any part in that election?

A. Yes, I was forcefully—

Q. Never mind the forcefully. What did you do?

A. As an observer for the A. F. of L.

Q. By whom were you designated for that?

(Testimony of Charles Spallino.)

A. Mr. Roberts of the Stove Mounters.

Q. Did you at the election have anything further to do with the organization of others for the A. F. of L.?

A. No.

Q. Do you in connection with that know whether or not Mr. Levascos had any further activity in that respect?

A. Yes.

Q. Do you know what they were?

A. Well, he formed a new committee to do all the organizing.

Q. I beg your pardon?

A. He formed a new committee to do the organizing.

Q. Do you know any of the persons on that committee?

A. Well, there is Percy Castro is one, Red Cunningham, Joe Arlotti, and Joe Sanchez.

Q. Anyone else that you remember?

A. Not that I remember.

Q. What about John Levascos?

A. Yes, Johnny Levascos was on it. [341]

Mr. Collins: At this time I wish to move to strike the testimony on the ground it does not tend to prove or disprove anythings in issue in this case. There is no showing any of these people were agents of the O'Keefe and Merritt Company. I also move to strike on the ground that the statement of the witness that Johnny Levascos formed a committee is the rankest sort of a conclusion, and there is no foundation laid for such testimony. [342]

(Testimony of Charles Spallino.)

Trial Examiner Kent: The record may remain. I don't know that I would consider that a conclusion, but it does represent the danger of the argument we had before, letting a witness go ahead and testify as to conclusions and not objecting until he is through. It isn't time-saving.

Mr. Collins: I got myself in a controversy a moment ago with counsel because I didn't let the man finish before I moved to strike.

Mr. Nicoson: I don't think he has finished yet.

Trial Examiner Kent: It is a little bit ambiguous. I will let counsel inquire further and ask one question as to how he knows Levascos appointed the committee. Technically, I suppose, the objection is right.

Q. (By Mr. Nicoson): Do you understand the Trial Examiner's suggested question?

Trial Examiner Kent: How do you know Levascos appointed the committee?

The Witness: It is the way Johnny gets around there, the same way he works with me. I know he had a conference with these fellows, because I was in a position to see his actions as president of the Five and Over Club; I had chances to go into the office, personnel office, and see him make transactions with his—these membership applications and check in with Fred and with the personnel department there.

Mr. Collins: Did you hear him organizing the committee [343] or see him organizing it? Or did he tell you he organized it?

(Testimony of Charles Spallino.)

The Witness: Sure, he told me.

Mr. Collins: He told you he organized it?

The Witness: He even told me he was money out in collecting his dues.

Mr. Collins: Just a moment, Mr. Spallino.

Trial Examiner Kent: Did he tell you he appointed the committee? That was the question I think Mr. Collins asked.

Mr. Collins: Did Mr. Levascos tell you?

The Witness: No, he didn't tell me he appointed a committee.

Mr. Collins: O.K. I now move to strike this entire line of testimony upon the ground that this man is testifying to his own conclusions, suspicions, surmise and conjecture.

Trial Examiner Kent: Not the entire line.

Mr. Collins: That portion of it pertaining to he formed the committee. I move that be stricken and all the testimony pertaining to it, and given thereafter, be stricken; nothing but guesswork. That is the very conclusion of this court, to determine who did these things.

Trial Examiner Kent: I will sustain the motion.

Mr. Tyre: Your Honor, I think before you rule on it, I think it should be called to your attention Mr. Levascos throughout Mr. Spallino's testimony has been shown to be an [344] agent working for the O'Keefe and Merritt Company, for the very purpose of organizing the A.F.L. and to circulate against the C.I.O. For that reason any statements made by the agent Levascos are binding upon

(Testimony of Charles Spallino.)

O'Keefe and Merritt, even though they be a conclusion of the witness.

Trial Examiner Kent: The only part of the testimony, Mr. Tyre, that is stricken in view of the motion, is that last part that the witness gave that Levascos appointed the committee. It is obvious he doesn't know. That is purely a conclusion. It is obvious from the testimony.

Mr. Tyre: I thought he said Levascos told him he formed the committee.

Trial Examiner Kent: No, he said he didn't, if I understood him right.

The Witness: No.

Mr. Tyre: I withdraw my statement.

Trial Examiner Kent: That is the only part of the motion that is granted. The rest of the testimony is in.

Q. (By Mr. Nicoson): You mentioned a Mr. Cunningham. Who is he?

A. Well, I don't know what capacity he has now. At the time he was a straw boss or leadman in the generator department.

Q. You mentioned a Percy Castro. Who is he?

A. He is in about the same capacity in the enamel plant, [345] straw boss or leadman.

Q. At any time after the election, did you see either Mr. Cunningham or Mr. Castro do anything in connection with the A.F.L. application cards?

Mr. Collins: Just a moment. Objected to on the ground it doesn't tend to prove or disprove

(Testimony of Charles Spallino.)

anything at issue in this case. There is no showing Mr. Castro or Mr. Cunningham are officials of O'Keefe and Merritt Company, nor is it shown they were authorized in connection with the card, any activities they might have had in connection with the union. There is no showing it is binding on either of these respondents in this case.

Trial Examiner Kent: Read the question, please.

(The question was read.)

Trial Examiner Kent: The objection is overruled. He may answer.

Mr. Garrett: I want to object to that question as being incompetent, irrelevant and immaterial. What bearing would it have on any of the issues in this case if they had?

Trial Examiner Kent: The answer will be yes or no. Then I suppose another question will follow. It is a foundation question, as I see it. You can answer.

The Witness: The question again.

Mr. Nicoson: Read the question.

The Witness: Did I see the two——[346]

Mr. Nicoson: Read the question to the witness.

(The question was read.)

The Witness: Yes.

Q. (By Mr. Nicoson): What did you see?

Mr. Collins: Objected to on the grounds previously stated.

Mr. Garrett: I am going to object to that.

Trial Examiner Kent: It may be or may not be.

(Testimony of Charles Spallino.)

Mr. Nicoson: I would like to withdraw that and ask him another question.

Q. (By Mr. Nicoson): The things you saw, where did they occur? A. In the plant.

Q. Was it during or off working hours?

A. During working hours.

Q. What did you see?

Mr. Collins: Objected to on the same grounds heretofore stated.

Mr. Garrett: Objected to on the ground it is incompetent, irrelevant and immaterial. It seems to me after, as before the election, the A.F.L. organizations had a perfect right to get signatures on application cards, either through Mr. Castro or through Mr. Cunningham, or anyone else.

Mr. Nicoson: On company time and property?

Mr. Garrett: And on company time. If they could do it, why not? [347]

The Witness: How come the C.I.O. couldn't do it?

Trial Examiner Kent: Never mind.

Mr. Nicoson: Wait a minute.

Mr. Garrett: Organizations get theirs signed on company time. I don't think there is anyone here so naive that they think people run off the premises or wait until 5:00 o'clock to sign an application card.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: As far as I am concerned, it seemed they used brickbats and clubs out there in the fac-

(Testimony of Charles Spallino.)

tory getting members in both unions. I can't see any difference.

Mr. Schullman: On behalf of my clients, I move the remarks of counsel against any organizational methods, which are not salubrious, do not apply.

Trial Examiner Kent: I ruled the answer might be taken. I think the answer was in to the last question.

Mr. Nicoson: Will you read back the record?

(The question was read.)

The Witness: What did I see?

Mr. Collins: Has there been a ruling?

Trial Examiner Kent: Yes.

Mr. Nicoson: Yes.

Trial Examiner Kent: I ruled he might answer.

The Witness: I have seen Castro come into the back end [348] of my department, the drill press department. There was a new man employed there and he came there during working hours to sign him up. The boy told him he was just a veteran, he was on leave for 30 or 60 days. I don't recall whether it was 30 or 60 days. And he tried to sign this boy up. The boy refused to be signed. [349]

Q. (By Mr. Nicoson): Was there anything else you observed in that connection?

Mr. Garrett: I move to strike the whole testimony on the ground it is clearly shown it has no relevancy, by the answer.

Trial Examiner Kent: The testimony is admissible. I think your objection may probably go to

(Testimony of Charles Spallino.)

the weight, I suppose; unless it was in a supervisor's presence.

Q. (By Mr. Nicoson): Did you observe anything further with respect to these two gentlemen?

A. To Red Cunningham I did observe, I seen with my own eyes applications with Johnny Levascos in a little room adjoining Fred Rotter's office, that is, the personnel office, changing over these applications, cash and a list of names, which later was brought into Andy Sherman for a checkup.

Q. Was this during working hours——

A. Working hours.

Q. ——or off hours? A. Yes.

Q. Yes what? A. During working hours.

Q. Did you observe anything further with respect to these two gentlemen in that regard?

A. I guess that is about all.

Trial Examiner Kent: Where was Mr. Rotter?

The Witness: I don't recall him in his office. His office is opposite this little place.

Mr. Collins: I wish to move to strike that last testimony on the ground there is no proper foundation shown. The mere statement "during working hours" does not in and of itself show these people were being paid, Mr. Levascos, for example—this last testimony of the witness, there is no showing at this time this witness knows whether Mr. Levascos is being paid by O'Keefe and Merritt, the A.F.L. or the C.I.O. or what he was doing around there.

Mr. Nicoson: I think that is immaterial, your Honor, if he was doing it during working hours.

(Testimony of Charles Spallino.)

He is supposed to be working during working hours, not on union business.

Trial Examiner Kent: It has materiality. There is a question of weight to be considered.

Mr. Collins: I wish to add the additional reason there is no reason that this witness knows it was during the working hours of Mr. Levascos. Mr. Levascos is an expeditor. He works sometimes nights, days, all the times; probably not at all.

Trial Examiner Kent: The record may remain. As I said, the question is to the weight of the testimony.

Mr. Nicoson: The question of the weight is for the jury, not for objections.

Trial Examiner Kent: That is true. [351]

Q. (By Mr. Nicoson): After the election, Mr. Spallino, did you have an occasion to talk to Mr. Daniel P. O'Keefe?

A. I did. The week following.

Q. Beg pardon? A. The week following.

Q. Where did you talk to Mr. O'Keefe?

A. In his office.

Q. Who was present? A. Just him and I.

Q. What was said by Mr. O'Keefe and what was said by you?

A. Well, may I state the reason why I was there to see him?

Q. You can state what you said to Mr. O'Keefe and what Mr. O'Keefe said to you.

A. Well, I went to Mr. O'Keefe to tell him that the fellows—the members——

(Testimony of Charles Spallino.)

Mr. Garrett: One moment. This is obviously not a part of the conversation.

Trial Examiner Kent: What did you tell him?

Q. (By Mr. Nicoson): What did you tell him?

A. The members of the Five and Over had been telling me they had heard rumors since the election there was no more Five and Over Club; we lost the Five and Over Club; we lost all our benefits. And in fact, they were going to plug up a hole they had dug in the enamel plant for floor furnace or water heater, I don't recall which it was. And that he was going to close [352] that end up. He was telling me, he says, "Charlie, it doesn't make any difference, as far as the Five and Over Club is concerned. It will still exist. Your bonuses, as far as you are making money, you will always get your bonuses and any benefits you receive will still continue."

He says, "I was over at Phyllis' house"—that is his daughter—"and there was a fellow there, a personal friend of the family. He is a contractor." He told them that he was sorry that the O'Keefe and Merritt went C.I.O. because his building contracts were all A.F.L. That he couldn't do business with Mr. O'Keefe.

And further he went on, that he went to a golf course or met some other friend that was in the building trade—or building contractor. That they were disappointed because O'Keefe and Merritt went C.I.O., because they couldn't give them any business.

(Testimony of Charles Spallino.)

But he says that he had a speech planned that he was going to tell all the employees, so that was all there was to it.

Mr. Nicoson: Off the record.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. [353]

Q. (By Mr. Nicoson): It has been stipulated here that the third talk Mr. O'Keefe gave and which Mr. Collins is going to bring in the transcript of, occurred on or about February 1st. Did you attend and hear that speech? A. The second speech.

Q. Third one. A. The third one? Yes.

Q. Did anyone there talk besides Mr. O'Keefe and Mr. Durant?

A. There was Mr. Roberts of the Stove Mounters.

Q. How did Mr. Roberts come to talk, do you know? A. How did he come to talk?

Q. Yes. A. He was introduced by Mr. Durant.

Q. What did Mr. Roberts have to say at that time?

A. Well, he urged the boys to fall in line as soon as possible, to back the A.F.L. He could get the contract and everything going as soon as possible, for everybody to co-operate with him and see they had their dues paid up and membership all up.

Q. Did Mr. Roberts say anything further at that time?

A. He said that the contracts were all cleared with the different stove organizations, and we would

(Testimony of Charles Spallino.)

have the same thing that the other stove organizations are enjoying.

Mr. Nicoson: Now, with the exception of reserving the right to recall this witness—there has been some testimony [354] in this record about Pioneer Electric Company.

Q. (By Mr. Nicoson): Do you know anything at all about the Pioneer Electric Company?

Mr. Garrett: Wait a minute.

Mr. Nicoson: He can answer that yes or no.

Mr. Garrett: I object to that question. I never heard of a question like that before in my life. It doesn't put anything to the witness.

Mr. Nicoson: Well, it is a preliminary question, testing his knowledge.

Trial Examiner Kent: He may answer yes or no.

Q. (By Mr. Nicoson): Do you know, of your own knowledge, where, during the year from August 15, 1942, up to and including August 14, 1945, the Pioneer Electric Company was located?

A. Yes.

Q. Where was it located?

A. It is on Los Palos Street.

Mr. Garrett: How do you spell that?

Mr. Nicoson: L-o-s P-a-l-o-s.

Mr. Collins: Before we get a lot of errors, isn't that in the O'Keefe and Merritt factory?

The Witness: It is in the O'Keefe and Merritt factory.

Q. (By Mr. Nicoson): Will you describe the

(Testimony of Charles Spallino.)

location of the Pioneer Electric Company in the O'Keefe and Merritt Company? [355]

A. The location is right on Los Palos Street near the Olympic Boulevard—it is within a half a block of Olympic Boulevard on Los Palos.

Q. At the expense of being accused of leading you, isn't that what is the northeast corner of the O'Keefe and Merritt Building?

A. That is right.

Q. State, if you know, whether or not there were any physical barrier between the portion occupied by Pioneer Electric and the portion occupied by O'Keefe and Merritt?

A. There was a wall.

Q. What sort of a wall?

A. There was a plank wall, I would say, about eight or nine feet——

Mr. Collins: Mr. Nicoson, I may be able to shorten this by a stipulation. I am willing to stipulate that the Pioneer Electric Company occupied approximately 12,000 square feet in the O'Keefe and Merritt factory on the Los Palos side; that all during the war they made generators and they had a wall dividing it, with two doors, one to come in and one to go out through the O'Keefe and Merritt factory, one existing on Los Palos Street.

After the war was concluded and they began to terminate the contracts, the Pioneer Electric had only some civilian generator business to continue. The walls were torn down. [356] The generators

(Testimony of Charles Spallino.)

were moved to the O'Keefe and Merritt proper, and this part was utilized for some other purpose of the O'Keefe and Merritt Company. The employees were being commingled with the O'Keefe and Merritt employees in the factory, and the office personnel was moved upstairs close to what has been identified as my office at the top of the building.

That the Pioneer Electric Company continues to have their offices upstairs near mine, and they now have a lease on the entire factory of the O'Keefe and Merritt Company, with the exception of shipping, servicing, plant construction and sales.

This is no part of the stipulation. I might add, Mr. Nicoson, so far as my case is concerned, I expect to produce the leases, articles of copartnership, the certificate of fictitious firm name and so on.

Mr. Nicoson: Will you further stipulate that shortly after V-J Day, the number of the employees of Pioneer Electric Company was considerably reduced?

Mr. Collins: Yes. So were the employees of O'Keefe and Merritt drastically reduced.

Mr. Nicoson: Can you state——

Mr. Collins: I can't state that; I don't know.

Mr. Nicoson: ——approximately how many are left at the Pioneer?

Mr. Collins: No, I don't know. [357]

Mr. Nicoson: Without binding myself as to proving the actual number of employees that are left, I can go with him on the stipulation up to the point where he speaks about the leasing. I can't join in

(Testimony of Charles Spallino.)

the stipulation, at least at this time, on that portion of it.

Mr. Collins: I am trying to save time with this witness. I expect to prove all these things.

Mr. Nicoson: I appreciate that. I am glad to be able to go along with you up to the leasing part.

Mr. Collins: I would be precluded, though, from introducing evidence——

Trial Examiner Kent: Testimony of some of the company officials probably would be more——

Mr. Nicoson: I understand Mr. Collins is going to bring the lease and the articles of copartnership, which I would like to have as part of the record, and I think——

Mr. Collins: I am going to make that part of my case, the original lease and articles of copartnership of 1942, and from time to time as new partners were added to the thing, each time a new certificate of business was filed on. I have the file with me right now, if it will expedite matters. I would rather do it the regular way.

Mr. Nicoson: Can't we stipulate up to the lease portion and let the rest go in by documentary evidence? Is that agreeable? [358]

Mr. Collins: Yes. I don't want my stipulation to preclude me from introducing the lease. There is a valid lease.

Mr. Nicoson: I don't want that, either. I don't want to preclude anything about the lease or articles of copartnership. If you don't put them in, I think I want to put them in. In any event, as you say,

(Testimony of Charles Spallino.)

the articles originally in August of 1942 and there after——

Mr. Collins: Maybe I had better frame my stipulation a little bit more accurately, if I can look at this file.

Trial Examiner Kent: It might be wise, anyway, to go off the record so you gentlemen may be able to arrange a stipulation.

Mr. Collins: I offer to stipulate that a copartnership, known as the Pioneer Electric Company, was formed on the 15th day of August, 1942;

That the certificate of business fictitious firm name was filed on October 16, 1942——

Mr. Nicoson: 15th.

Mr. Collins: October 16th it was filed.

Mr. Nicoson: The stamp shows 15th.

Mr. Collins: October 15th, then, 1942. That thereafter on the 1st day of January, 1944, certain new members were admitted to this partnership—wait a minute. I am getting a little ahead of myself. A lease was thereafter entered [359] into on the 16th day of November, 1942, between the Pioneer and O'Keefe and Merritt Company, leasing 11,740 square feet of floor space, now enclosed, sometimes known as 1221 Los Palos, at a monthly rental of \$500.00 per month and other pertinent provisions in the lease.

Mr. Nicoson: Will the lease be produced?

Mr. Collins: Yes. Thereafter, on the first day of January, 1944, the copartnership admitted into

(Testimony of Charles Spallino.)

its membership certain new partners. I don't have the date of the—in fact, I don't have the date of the filing of the fictitious firm name on this new addition.

Mr. Nicoson: January 28, 1944.

Mr. Collins: Thereafter, on January 28, 1944, the fictitious firm name of that was recorded. On the 15th day of November, 1945, certain new members were introduced into the copartnership and the fictitious firm name of that organization, of the amended copartnership was then filed on——

Mr. Nicoson: November 28th.

Mr. Collins: On November 28, 1945. No. On the 23rd day of November, 1945.

Mr. Tyre: That is when it was signed.

Mr. Collins: Very well. On the 28th day, then. That a lease, a new lease was thereupon entered into between the Pioneer Electric Company and the O'Keefe and Merritt [360] Company on the 2nd day of January, 1946, wherein that part of the O'Keefe and Merritt factory, generally speaking, excepting the offices, with the exception of that part of the offices reserved by the Pioneer for their own office, excepting the shipping department, the service department, any new construction was leased to the Pioneer Electric Company by the O'Keefe and Merritt Company at an annual rental of \$48,000.00. There are other pertinent portions of the lease, and I intend to introduce these in evidence later.

I am willing to stipulate that was the condition

(Testimony of Charles Spallino.)

as to the Pioneer Electric Company from then until now.

Mr. Nicoson: Well, is that in addition to what we have already stipulated about the physical setup?

Mr. Collins: Yes, in addition to the physical setup. The part that the Pioneer Electric Company had during the war has now been enlarged to include all the factory, instead of that portion, that 11,000 square feet, that was enclosed for their benefit. It now includes the entire factory; they have enlarged.

Mr. Nicoson: Have we two stipulations or do we only have one? [361]

Mr. Collins: I will stipulate to both or all of it. I don't know where we stand.

Mr. Nicoson: What I am interested in is this portion of the plant which we tried to stipulate to a while ago that was enclosed by a wall, that on or shortly after August 14, 1945, the wall was removed and the machinery used by the Pioneer Electric Company was moved out of that portion into the portion of the building occupied by the O'Keefe and Merritt Company; that the employees of Pioneer, such as remained, were commingled with the employees of O'Keefe and Merritt.

Mr. Collins: I don't know whether we are going to get any place with the stipulation or not. I don't know whether they were commingled. They were put over there against a wall to put the generators together.

(Testimony of Charles Spallino.)

Mr. Nicoson: I thought I was using your exact words.

Mr. Collins: Maybe we can't stipulate, Mr. Nicoson. I don't know. If the statements I have made, if you care to stipulate to these, that is it.

Mr. Schullman: Before we adjourn, do I understand——

Mr. Nicoson: Would you mind letting us clear this thing up? If we can reach a stipulation we will know what we are stipulating to. If we can't, let it go by the board. I would make this suggestion, Mr. Collins, and counsel:——

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record. [362]

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Schullman: Before we adjourn, just for a second, I won't be here tomorrow, as I indicated. If this witness rests at this time or renews his testimony, I will make a subsequent motion.

I would now like to make a motion in respect to the witness Charles Spallino. In behalf of my clients, Local 792, I want to make a motion to strike all of his testimony from the commencement of his testimony to the very end, insofar as the same is inadmissible, incompetent, irrelevant, and not binding on the Painters, Local 792;

That none of the people, persons concerning whom he testified and to whom he spoke represented my clients, Local 792, or were agents of my clients

(Testimony of Charles Spallino.)

or authorized to represent them. There is no testimony in the record whatsoever they could speak for or in behalf of Local 792, and that the matters are things to which he testified and did not affect or concern or involve anyone who belonged to or was authorized to speak for or representative of the Painters, Local 792.

I want two separate motions. That is, a motion referring to his testimony, in which I move to strike all his testimony insofar as it affects my clients.

The second motion I wish to make is I wish to strike from the record, and for the sake of certainty, Exhibits 3 to 6. [363] I believe the court indicated he reserved ruling. In the event that ruling is made in my absence conforming with the rulings made on Exhibits 7 and 8.

I want to strike from the record, for the reasons heretofore stated, both in the objections to the admission and in my objections to the testimony, Exhibits 3 to 6, inclusive, Board's Exhibits, for the reason that on their face, and the testimony given by this witness concerning them, they cannot legally be binding upon my clients, Painters Local 792, for the reasons heretofore stated.

In addition, I move to strike from the record Exhibits 7 and 8 heretofore ruled on as admitted for the same reasons. And for the additional reason that those exhibits also do not purport to be document emanating from anyone who is authorized to issue such documents. On their face they purport to be documents of other persons than Painters

(Testimony of Charles Spallino.)

Local 792, and that all of the testimony related by this witness concerning such documents related to persons other than representatives, officials, agents, or anybody with authority to speak for or in behalf of Painters Local 792. This witness certainly admittedly himself does not represent or has represented or has authority to speak for Painters, Local 792. I therefore respectfully renew both of these motions.

Trial Examiner Kent: The motions, of course, raise some highly technical points. I will reserve ruling on your motion [364] to strike.

Mr. Schullman: I am only making them, your Honor. I won't be here at all. My associate may be here, and out.

Mr. Collins: I want the record to show I make the same motion on behalf of respondent Pioneer Electric Company; we join in that motion.

Trial Examiner Kent: I will make the same ruling. I will reserve ruling on Mr. Collins' motion just made.

(Whereupon, at 5:05 o'clock p.m., March 14, 1946, the hearing was adjourned to 10:00 o'clock a.m., Friday, March 15, 1946.) [365]

Friday, March 15, 1946

10:00 o'Clock A.M.

Trial Examiner Kent: Mr. Reporter, at this time I am making a couple of corrections in the record. In view of the fact that the ruling is in response to a motion by Mr. Collins, I can't see that the other

counsel should be prejudiced. On page 132, the Trial Examiner's ruling, beginning on line 10, I would ask that it be corrected to read: "Now, assuming I ruled the two entities were not identical and thereby precluded the Board's counsel from putting in a complete case, then I might wind up with the kind of record that would cause the record to be reopened. I think we had better take a complete record."

Mr. Garrett: What page and line was that correction?

Trial Examiner Kent: That began on 132 and began on line 10.

On page 134, the Trial Examiner's ruling at the bottom of that page: "I think in order to get a complete record I have got to take all the relevant testimony. Assuming I narrowed the presentation down to whether or not the Pioneer, the partnership, and the corporation, are tied up so that the hearing may be shortened and ruled that neither of the employer respondents may be considered to be an alter ego of the other, it might require a double hearing, for the Board might very well reopen the hearing and order additional evidence taken on the other phases of the case it deemed material." There is no substantial change. [370]

I may say, gentlemen, that I opened the hearing at 10:00 o'clock, and at 10:00 o'clock only Mr. Nicoson, Board's counsel, was here. In view of the fact we have agreed to work on somewhat shorter hours, I think we ought to be prompt, and I will

request all counsel to endeavor to be, except in a case of real emergency. I might also interject Mr. Collins was only about five minutes late. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record. You might proceed.

Mr. Nicoson: At this time, your Honor, I offer to stipulate with Mr. Collins as I understood him to propose yesterday that the facts and things—

Trial Examiner Kent: Pardon me. Off the record for the purpose of considering a possible stipulation.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: I now offer to stipulate as fact the remarks made by Mr. Collins in yesterday's hearing as shown by the transcript beginning on page 356 about the middle of the page, where the words "Mr. Collins" first appear; all the balance of that page, all the next page 357 down to where the words "Mr. Nicoson" first appear; beginning again on page 359, in the middle of the page where the words "Mr. Collins" appear for the third time, beginning with "I offer to stipulate," all of the rest of that page, including the exchange [371] between Mr. Collins and myself, and on page 360 down to the place where the word "Mr. Nicoson" first appears; then again beginning on page 360 where the word "Mr. Collins" first appears, all the rest of that page, and on 361 down to where the words "Mr. Nicoson" first appear in the middle of the page; beginning

again where the words "Mr. Collins" appear the first and only time on page 361, down to where the word "Mr. Nicoson" next appears at the bottom of the page.

I offer that as a stipulation or, rather, I accept the stipulation of Mr. Collins as he made it yesterday.

Mr. Collins: The acceptance of the stipulation was not timely, and in the interim I have discovered certain matters that would change my offer of stipulation. I will now offer proof as to the exact nature and extent of the operation of the Pioneer factory. I can't accept the stipulation.

Mr. Nicoson: That is all the offer I have.

Mr. Collins: However, I will say, Mr. Nicoson, I intend to put all these matters you offer to stipulate to in detail, including the various matters, as part of the respondent's case.

Mr. Nicoson: I just wanted the record to show that I was willing to stipulate to that. The witness when we recessed yesterday was named Charles Spallino on the stand. I have no further questions. You may cross-examine. Will you please take the stand, Mr. Spallino? [372]

Mr. Tyre: What is the order that the Examiner will want in the examination of witnesses? I will have questions, I take it, of most of the witnesses. Does the Examiner want me to follow Mr. Nicoson or will you prefer to have the other counsel examine first?

Mr. Collins: I wish to object to Mr. Tyre examining the witness on cross-examination, upon the

ground that he does not represent a party to this proceeding.

Trial Examiner Kent: As I indicated yesterday, I think Mr. Tyre should restrict himself to new matter not drawn out by Mr. Nicoson, but he can, I think he is entitled to examine.

Mr. Garrett: As I stated on the record, it seems to me that the stipulation about which there has now been some conversation vitally affecting the interests of both the A. F. of L. and the C.I.O. unions involved. It is my understanding that there has been no stipulation agreed upon and accepted by the Board, is that the fact?

Trial Examiner Kent: I think the record so shows. Mr. Collins said that on checking it he found some inconsistency and would prefer to call a witness and put the facts in that way. So the stipulation is out.

Mr. Collins: What is the order of cross-examination?

Trial Examiner Kent: I think Mr. Tyre may proceed, then you, Mr. Collins, then the other three gentlemen, Mr. Garrett, Mr. Smith for Mr. Schullman, and Mr. Reed. [373]

Mr. Collins: Before Mr. Tyre proceeds, I would like to interpose another objection to having Mr. Tyre examine this witness on so-called cross-examination. Under the rules of procedure in this state, if the Board intends to comply with the rules of evidence, a man is not permitted to lead and suggest to the witness. We are going to have a genuine in-

consistency, by which Mr. Tyre, who is obviously representing an adverse party in this case, and this man is his witness, he is taking his own witness on cross-examination, and under the rules of evidence he will be permitted to lead and suggest, which I suggest is unfair tactics on the part of the opposition here.

Mr. Smith: It should be direct rather than cross.

Mr. Garrett: I think you have a good point here, sir. Mr. Tyre must confine himself to new matter, not cross-examination. What is indicated is that Mr. Tyre is to be accorded the privilege——

Trial Examiner Kent: To bring out new matter, that is right.

Mr. Garrett: Well, is he going to be restricted to cross-examination? If so, he can't bring out new matter.

Trial Examiner Kent: No, it would be primarily in the nature of direct.

Mr. Garrett: Therefore I take it that Mr. Tyre then is to be permitted to supplement the direct examination of the [374] Board in whatever respects he can make the Trial Examiner feel to be proper.

Mr. Collins: I submit that the proper proceeding here is for Mr. Tyre to indicate to Mr. Nicoson that there is a further question he wants of this witness, and that should be directed to the witness through the Board's attorney. This is a proceeding, not a persecution by the Board's witnesses.

Mr. Tyre: Are you anticipating something?

Mr. Garrett: Mr. Collins is apparently suggest-

ing that the proper procedure for Mr. Tyre to follow would be to retire.

Trial Examiner Kent: Well, let us proceed. I don't think we will have any difficulty.

Mr. Garrett: I want the record to clearly show the opposition, and I think I speak for all the A. F. of L. unions, to Mr. Tyre being permitted to examine, cross-examine or otherwise interrogate my witnesses in these proceedings.

Mr. Collins: I join in that objection and renew and reiterate my own.

Trial Examiner Kent: Well, I in substance ruled on that yesterday. He may proceed. I think properly it would be in the nature of direct. I think in fairness and to shorten the time it should be in reference to matters which were not covered by the Board's examination.

Mr. Tyre: That is difficult. [375]

Trial Examiner Kent: There may be testimony in the record on which the witness' testimony is rather ambiguous. I think you are at liberty to attempt to clear that up.

Mr. Tyre: That is what I had in mind.

Mr. Nicoson: So the record is not confused, as representative of the Board I want to clearly state that I do not feel bound by the examination of Mr. Tyre, and I do not concede that it is part of my examination.

Mr. Tyre: I take it you also have no objection to my examining?

Mr. Nicoson: I certainly do not, but I want it clearly shown that you are not operating for the

Board, you are operating for the United Steelworkers.

Mr. Tyre: The payroll will show that.

CHARLES SPALLINO,
a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Tyre:

Q. Mr. Spallino, there is some confusion in the record, I believe, as to the periods of time during which you held office in the Five and Over Club. Can you advise us at this time what positions you actually held or hold in the Five and Over Club, and when you held those positions, indicating the years as best you can recall them? [376]

A. Well, I was vice president for four years, that is before 1942.

Mr. Garrett: Was that the four years ending in 1942?

The Witness: Yes. Then I was—held office in 1941 and '42, I held office as president, and I retired for two years.

Q. (By Mr. Tyre): Now, you held office in 1941 and '42 as president? A. President.

Q. And for four years prior to that time you held office as vice president?

A. As vice president.

Q. So that would mean from 1936 to 1940 you held office as vice president, is that correct?

A. Yes.

(Testimony of Charles Spallino.)

Q. Now you held office you said in 1941 and 1942 as president. Did you hold any office after 1942?

A. In 1945 I was reelected president.

Q. Did you hold any office in 1943 and 1944?

A. I did not.

Q. In 1945, what month were you elected president?

A. In January.

Q. I believe you testified that on a certain day Mr. Roberts gave you some application cards for membership in the Stove Mounters Union, and that thereafter you and Johnnie Levascos [377] obtained signatures of employees of O'Keefe and Merritt Company on those cards. Will you tell us during what parts of the day did you and Levascos obtain signatures to those cards?

A. During working hours.

Q. And during any of those working hours were you questioned by any foremen as to what you were doing?

Mr. Collins: Objected to as having been asked and answered.

Mr. Smith: The same objection is joined in by me.

Trial Examiner Kent: The answer may be taken. I can see what counsel for the other side have in mind, but I think they can clear it up better probably by cross-examination.

Mr. Tyre: Let me state, if the Examiner please, just so we will have no misunderstanding, I have gone over quite carefully my notes which I think

(Testimony of Charles Spallino.)

are rather carefully taken, and I am trying to sincerely not cover ground which has already been covered, unless there is some very definite ambiguity.

Trial Examiner Kent: No, I think a little amplification of those activities might be desirable for the record. I might suggest this: I would like somebody, I don't care who brings it out, to ask whether or not he left his own department and went into other departments, and I think the record might very well show if while he was doing that the [378] other foremen were also in the departments. Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Tyre: I think there is a pending question.

(Question read.)

A. Yes.

Q. (By Mr. Tyre): Will you state the names of the foremen whom you can recall who asked you what you were doing?

A. I recall one is Lawrence Matrenga, in the foundry.

Q. What did he say to you? [379]

A. Well, he said that—what I was selling, so I showed him the application blank and he walked away. That is his usual customary, he never says anything, he just walks away.

Q. Thereafter did you speak to any of the people in his department?

A. Yes, I went from moulder to moulder.

Q. About how long were you in his department

(Testimony of Charles Spallino.)

after you had shown him the application cards that you were signing up?

A. I would say a good half hour.

Q. Did Mr. Matrenga remain in the department during that time?

A. Well, he just walked around there, and I didn't pay any attention to him anymore.

Q. I think you testified the other day that you spent between two and three hours a day for a long period of time in your signing up these cards. In which departments of the plant did you spend those hours?

A. Any department I went to, any department I wanted to.

Q. Did you spend that time in any department other than your own? A. Yes.

Q. Which other departments?

A. Well, you can take the pressline, shear department, generator department, out in the yard, carpenter shed, shipping department, throughout the whole plant. [380]

Q. Were any of the foremen present in any of these departments at the time that you were in those departments signing up the people for the A. F. of L.?

A. Well, they couldn't miss seeing me.

Q. Did you see any of the foremen in those departments when you came in? A. Yes.

Q. When you saw Mr. Roberts for the first time, you saw him, I think you said, in the outer office, is that right?

(Testimony of Charles Spallino.)

A. In the outer office, yes, sir.

Q. How did you happen to be called?

Mr. Collins: Just a moment. I move that the answer be stricken upon the ground that it is assuming a fact, that the question does assume a fact not in evidence.

Trial Examiner Kent: Reframe your question.

Mr. Collins: As I recall the testimony, he saw Mr. Roberts, I believe, the first time outside of the factory in the street.

Mr. Tyre: I don't think that is the evidence.

Mr. Nicoson: That is not my recollection of the evidence either.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Tyre): Where is the first time you saw Mr. Roberts?

A. Well, in this—in the front office by the telephone [381] operator's entrance.

Q. How were you called out to the office?

A. By Johnnie Levascos.

Q. Where were you at the time that you saw Levascos? A. In my department.

Q. And he came over to you and asked you to come out to the front office? A. Yes.

Q. You testified the other day, Mr. Spallino, that you attended a meeting in Mr. Collins' office where there were a number of A. F. of L. representatives present. Will you tell us how you happened to be called into that meeting?

A. In the same manner, through Levascos, being that he has a phone there, he gets the phone call.

(Testimony of Charles Spallino.)

Q. What did he tell you when he came over to you?

A. Said we were wanted over to Collins' office, to go over to Collins' office.

Q. I believe you also testified that you met Mr. Roberts out at the guard station one time. How did you happen to be called to the guard station at that time? A. The guard.

Q. Pardon? A. By the guard.

Q. By the guard. Did the guard come in the plant or did he telephone, or do you know? [382]

A. Well, I am not sure whether I was in the lunch stand at that time that he called me, but I was within sight of him, he came up through the aisle and motioned to me and told me that there was a fellow waiting for me.

Q. At this meeting in Mr. Collins' office, where the other A. F. of L. representatives were present, did Mr. Collins participate in that meeting other than to sit in on it? A. Yes.

Mr. Garrett: One moment. This is going into something which has already been asked and answered.

Mr. Tyre: I don't think it has, your Honor.

Trial Examiner Kent: I am sorry I have not a clear recollection of the testimony. I imagine it will only be a question or two, won't it?

Mr. Tyre: That is right.

Trial Examiner Kent: Very well. You may take the answer.

Mr. Tyre: Will you read the question?

(Testimony of Charles Spallino.)

(The record was read.)

The Witness: Yes.

Q. (By Mr. Tyre): When you and Mr. Levascos went to the office of Mr. Collins, were any of those A. F. of L. representatives already there?

A. Yes, they were.

Q. Did any come in after you arrived? [383]

A. I don't recall.

Q. You don't recall whether any did?

A. Yes, I don't recall.

Q. Who introduced you to these representatives?

A. I am not sure whether it was Roberts or Collins, himself.

Mr. Garrett: Did you say Robinson?

The Witness: Sir?

Mr. Garrett: Did you say Robertson?

The Witness: Roberts of the Stove Mounters.

Q. (By Mr. Tyre): That was the same Mr. Roberts that you had seen on several occasions earlier, is that right?

A. That is right, yes, sir.

Q. I believe you testified that there was a representative from the Carpenters Union there, and you didn't recall his name, is that right?

A. That is right.

Q. Was this representative one of the employees of the shop? A. No.

Q. He was a man you had never seen before, is that right? A. That is right.

Q. Will you state to us, Mr. Spallino, what the

(Testimony of Charles Spallino.)

conversation was with reference to the different A. F. of L. unions taking part in organizing the various workers in the shop, and by saying the conversation, I want you to state what Mr. Collins [384] said and what each of the A. F. of L. representatives stated about that particular problem.

Mr. Garrett: Objection is made to the question on the ground that the witness has already testified on direct for the Board as to the entire contents of that conversation, and at the conclusion of his examination in that respect stated that he had on that examination narrated everything he could remember concerning the meeting.

Mr. Tyre: I think the question was asked him about jurisdiction, then there was some question there as to the meaning of that word, and I think the record is in confusion at that point.

Trial Examiner Kent: I am sorry I do not recollect this entire record. I will let the answer be taken.

Mr. Tyre: Will you read the question so the witness can answer it?

(The question was read.)

Mr. Garrett: Object further on the ground the question assumes a fact not in evidence, to-wit, that Mr. Collins said anything in respect to that. It is leading. In other words, this attorney is indicating to this witness that he wants this witness to testify to certain things, to attribute them to certain persons in the room.

(Testimony of Charles Spallino.)

Mr. Tyre: Will you answer—well, is there a ruling on that? [385]

Trial Examiner Kent: If anything was said, you may relate the conversation.

The Witness: Well, there was a question asked.

Trial Examiner Kent: By whom?

The Witness: By Levascos, about colored people into the A. F. of L., and Roberts said that they took any color, creed, or race, and Mr. McMurray, I think, I am pretty sure he made that remark, that in the Machinists Local they still barred colored from the Machinists Local.

Q. (By Mr. Tyre): What time of the day was this meeting, Mr. Spallino?

A. It was any time after 10:00 o'clock in the morning. I wouldn't know exactly. It was after 10:00 in the morning.

Mr. Garrett: He has already testified in that respect that the meeting was in the morning, so that is a question by counsel which is repetitious of matter already brought out by the Board.

Mr. Tyre: Let the record show a considerable time elapsed after the question before Mr. Garrett's objection, apparently waiting for the witness to answer so that he could object.

Mr. Garrett: No, I was trying to find a memorandum in my notes, and I found that at the beginning of the afternoon session on March 14, 1946, the witness testified with respect to the time of the meeting, "It could have been in the morning."

(Testimony of Charles Spallino.)

Q. (By Mr. Tyre): Was anything stated at that meeting about the shipping department?

Mr. Garrett: Same objection, leading and suggestive, and already asked and answered.

Trial Examiner Kent: I don't think the question is dangerous. You may answer if you can, if you know.

The Witness: May I have that question again, please?

Trial Examiner Kent: The reporter will read it.

(The question was read.)

The Witness: Well, I stated yesterday that the Teamsters, that is, Mr. Blaney, he had made plans, arrangements, that I would have the shipping department boys ready for him at 8:00 o'clock in the morning, for him.

Q. (By Mr. Tyre): Well, was that what Mr. Blaney stated in that meeting or was that your conclusion?

Mr. Garrett: Just a moment. That is objected to as assuming a fact not in evidence. There has been no representation of Mr. Blaney in that respect, putting words in the witness' mouth, assuming facts not in evidence.

Mr. Tyre: He just testified about Mr. Blaney.

Trial Examiner Kent: Yes.

Mr. Smith: Now, I want to make a further objection, Mr. Examiner. It is obvious from Mr. Garrett's objections that this is repetitious is well-founded. I do not intend to participate in the

(Testimony of Charles Spallino.)

entire proceedings here, which I understand [387] are estimated to take a number of weeks. It seems extremely purposeless to go over testimony two times. If the Examiner is going to permit it to be done two times, there is no limit, it may be done three and four times.

Trial Examiner Kent: I think of course it is rather dangerous, unless we go after things that are really ambiguous and left unclear in the record.

Mr. Smith: The witness said that he testified about this yesterday.

Trial Examiner Kent: Otherwise, we are just getting repetition.

Mr. Tyre: Mr. Examiner, obviously I am not going over the entire witness' testimony. I have already gone over what Mr. Nicoson took two days for, and I am merely trying to clear up a few points I think are very ambiguous in it. If counsel will refrain from interposing these objections into the record, I think the record will be a lot shorter, and especially when their own objections are repetition of an objection. If there is any leading, it will be only for the purpose of clarification.

Mr. Smith: Which is no reason for repetition.

Trial Examiner Kent: Mr. Witness, try to talk louder. Counsel at the end of the table have to hear you, and sometimes they do not seem to follow you.

Q. (By Mr. Tyre): The question was—I will rephrase it, [388] Mr. Spallino. How did you know about those arrangements that Mr. Blaney was go-

(Testimony of Charles Spallino.)

ing to make for you at 8:00 o'clock the next morning, how did you know about it?

Mr. Garrett: That is assuming a fact not in evidence, that Blaney was going to make arrangements for Spallino. As a matter of fact, this witness testified on March 14, 1946, at the end of the afternoon session regarding the shipping department that the Teamster man wanted to know how many employees were in the shipping department, and that "I arranged to get them together at 8:00 o'clock in the morning."

Trial Examiner Kent: If that is the testimony, I think this question is all right. If there is no further testimony in the record, which I do not recollect. Read the question. Listen to it.

(The question was read.)

The Witness: Well, he had asked how many fellows we had in the department and how they felt towards the union, and how interested they were, and I told him that there was a lot of doubts in there, that a lot of them believed in belonging to the C.I.O., and that the best thing for him to come down and talk to them so that they would know what it is all about.

Q. (By Mr. Tyre): When and where did this particular conversation take place?

A. In Collins' office. [389]

Q. That was during this meeting that you have been describing?

A. Yes, sir.

Q. Did everyone present so far as you know hear that conversation?

(Testimony of Charles Spallino.)

A. Well, they could have and they could not have, because there was conversation, after, you know, almost breaking up, and that is where we were almost individually talking to one another, sort of breaking up.

Q. Where did you go after you left that meeting on that day? A. Went back to work.

Q. Did you go to the shipping department at any time after that meeting and before 8:00 o'clock the next morning?

A. Oh, yes, Johnny and I walked in to talk with Bob White and a few of the fellows in that office there, this fellow, this tall fellow, I can't recall his name, who is the assistant there, and we told him that this fellow Blaney was going to be there in the morning and to arrange all the drivers, deck hands and whatever he had, to have them ready for 8:00 o'clock in the morning.

Q. What time do the shipping department employees go to work? A. 8:00 o'clock.

Q. To whom did you make this statement, to have the boys [390] ready at 8:00 o'clock?

A. Well, directly it was this assistant. Bob White was in the front office there, and they were only a few of the men were still in the office there.

Q. Were you present the following morning when this meeting took place?

A. Yes, I went in before 8:00 o'clock to make sure that the men were all ready.

Q. Was Mr. White present at that time?

A. He was. [391]

(Testimony of Charles Spallino.)

Q. Was Mr. White present at that time?

A. He was.

Mr. Collins: Objected to. Just a moment. I move the answer be stricken on the ground that it does not tend to prove any issue. This witness stated yesterday on direct examination he didn't know what Mr. White's capacity was, so I don't see what the materiality of another fellow employee being in there has to do with this case. The evidence as I understand it is that White had certain duties and he was working at them all by himself.

Mr. Tyre: Let's be realistic. I will ask a few more questions, then, if Mr. Collins prefers, about Mr. White to establish the foundation.

Q. (By Mr. Tyre): You have been working at this plant for how many years, Mr. Spallino?

A. Going on nineteen years.

Q. During that time have you ever had any occasion to be in what is known as the shipping department?

A. Yes.

Q. How often?

A. Well, I think I worked for Bob White for over a year as a swamper on a truck.

Q. When was that?

A. That was around 1929, 1930, around that time, probably not quite a year on the truck for Bob White. [392]

Mr. Collins: I think Mr. Tyre is missing the entire point of my objection. I probably unintentionally led him and the Trial Examiner astray. I don't want to unnecessarily clutter up this record,

(Testimony of Charles Spallino.)

which is costing us a dollar and a half a page, but I want to point out to him at this time, I believe the witness has identified Bob White as being the head of the shipping department, and there has not been any shipping department since the end of the war, and since sometime in August last year he has nobody working for him except himself.

Trial Examiner Kent: Yes. I think that was in response to a question from Mr. Nicoson to you. I don't know that that is actually in evidence yet.

Mr. Tyre: That was Mr. Collins' statement, your Honor. I would prefer to let the testimony come from the witness under oath.

Mr. Garrett: What he said and what happened in 1929 wouldn't be of any great value to us.

Mr. Tyre: I will reframe it.

Mr. Collins: I think you'd better.

The Witness: We will find out who is he. Your Honor, may I say something to you?

Mr. Tyre: Just a minute.

Trial Examiner Kent: No.

The Witness: I am all excited now, with these two [393] fellows complaining——

Mr. Collins: Just a moment. I object to any voluntary statement of this witness and I move the volunteered statement be stricken from the record as not responsive.

The Witness: I will smoke a cigarette.

Trial Examiner Kent: Yes, you may, if that will help you.

(Testimony of Charles Spallino.)

Mr. Tyre: May we have a two minute recess for the witness, your Honor?

Trial Examiner Kent: Yes, we will take a two minute recess.

(Short recess.)

Trial Examiner Kent: Very well. On the record.

Mr. Tyre: Was there a question pending?

Q. (By Mr. Tyre): From your own knowledge, Mr. Spallino, do you know whether or not Mr. Bob White has always had, while you have been working for the Company, people under him whom he was supervising and over whom he was a foreman?

Mr. Collins: Just a moment.

Mr. Garrett: May I have the second part please?

Trial Examiner Kent: Read the question.

(Question read.)

Mr. Collins: Just a moment. I object to this as being an attempt to impeach their own witness.

Trial Examiner Kent: Reframe the question. I think that you can bring out questions to show his duties, so far [394] as this man has actual knowledge, what he actually did.

Mr. Collins: There is a much more expeditious method of doing this. The Board has called here Mr. O'Keefe, who is president of the Company and who is under subpoena, and they can ask him that direct question and find out.

Mr. Tyre: May we have the testimony from the witness as to what his experience with Mr. White has been himself, then we can later find out if Mr. White was a foreman.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Yes, I will take that.

Q. (By Mr. Tyre): Mr. Spallino, did you have a conversation with Mr. White on this morning prior to eight o'clock? A. Yes.

Q. And will you state what that conversation was, namely, what you stated and what he stated?

A. Well, I told him that to have these men ready at—that this fellow would be there, would be there at eight, to have the boys ready at eight o'clock, to be sure that those men did get out there.

Q. Did you tell him who you meant by this fellow?

A. Mr. Blaney. I didn't tell him it was Mr. Blaney. I told him it was the fellow from the Teamsters' Union. I didn't name him.

Q. Did such a meeting take place?

A. Yes.

Q. Where did it take place? [395]

A. Right across from the shipping, right in front of the shipping department.

Q. How long did it last?

A. From thirty to forty minutes.

Q. Were you there?

A. Yes, I was present.

Q. Was Mr. Blaney there?

A. The first time Mr. Blaney was not there. He sent a fellow there.

Q. On this particular occasion at eight o'clock in the morning following the meeting in Mr. Collins' office, was Mr. Blaney at that meeting, or was someone else there?

(Testimony of Charles Spallino.)

A. At Mr. Collins' office?

Q. No, no, at this particular meeting at the shipping department, the meeting you are now describing.

A. Was Mr. Blaney there you say?

Q. Yes.

A. No, he was not there, at this first meeting.

Q. Do you know the name of the man who was there?

A. No, I don't. I don't recall his name.

Q. Can you describe him?

A. He was a very tall fellow and he wore an overcoat, and that is about all I can describe him. He said that Blaney could not get there that morning, that he would do all he could to give the boys all the information he could. [396]

Q. Was Mr. Levascos present at that shipping department meeting?

A. I don't think that he was.

Q. There is one other point I would like to clear up, Mr. Spallino, about the signing of these cards. You testified I believe that Mr. Roberts came to you one time, and at which time you had only about 38 cards. I think you also testified that he told you he needed another 16 or so cards signed right away. Do you recall that?

A. Yes.

Q. When did this conversation between you and Mr. Roberts take place?

A. In the front office.

Q. I think you then testified that you went and got the 16 cards signed up, is that right?

A. That is right.

(Testimony of Charles Spallino.)

Q. When was that after this statement from Mr. Roberts that he wanted them signed, that is how soon after was it?

A. Well, I went right over, right then and there, I went to the service department.

Q. Did you go alone?

A. I went alone, yes.

Q. Was Mr. Levascos waiting with Mr. Roberts in the other office? A. He was. [397]

Q. How long were you gone?

A. Oh, I would say about fifteen minutes.

Q. And then where did you go after the cards were signed up?

A. I came back to Roberts.

Q. And you handed him the cards?

A. Yes.

Q. Now I would like to get a little clarification, Mr. Spallino, on this conference you had with Mr. Collins when this leaflet was being shown you. The record shows that the election in this case took place on November 20, 1945, which was on a Tuesday. Bearing that date in mind, can you tell us when you had this conversation with Mr. Collins when he showed you this type of leaflet?

A. It was on that Monday.

Q. On the Monday preceding the Tuesday of the election?

A. Yes, it was Monday afternoon.

Q. How did you happen to be up in Mr. Collins' office that afternoon? A. I was called there.

(Testimony of Charles Spallino.)

Q. Who called you in? A. Jack Levascos.

Q. What did he say to you?

A. He says Collins wanted to see us upstairs.

Q. Was anyone else in Mr. Collins' office when you arrived [398] besides Mr. Collins? A. No.

Q. How many pages was this document which Mr. Collins had in front of him?

A. One page.

Q. Was it in longhand or printed or typed?

A. It was typed. It had some corrections on there with pen.

Q. Did Mr. Collins say anything to you about that leaflet?

A. Well, he said that I should get Mr. O'Keefe's approval.

Q. Didn't he tell you what to do with that leaflet?

A. And to have it printed outside of the plant, to send it out to a printer.

Q. Did he tell you what should be done with it after that?

A. To distribute it at the employees' entrance the same as the C.I.O. distributed their leaflets.

Q. Was anything said about the Five and Over Club at that time about this leaflet?

Mr. Garrett: Objected to as having been asked and answered. Every bit of the witness' testimony on this point is identical with what he gave yesterday afternoon.

Mr. Tyre: I will state on the record, your

(Testimony of Charles Spallino.)

Honor, I don't think it is, and if it is it is certainly clarifying what was on the record.

Trial Examiner Kent: Will you read the question?

(Question read.) [399]

Trial Examiner Kent: I will take the answer.

The Witness: What was that again?

Trial Examiner Kent: Read the question.

(Question reread.)

A. Well, he says that the Five and Over Club, being that they got all those benefits in there, that we had just as much right as the C.I.O. to put out such literature, to advise the members, you know, that the only salvation for the plant would be that the A. F. of L. would have to come in there, because all the other stove manufacturers were under the A. F. of L. banner, and naturally no matter what the C.I.O. would promise that they could never get what they promised, because we had to follow the competitors.

Q. (By Mr. Tyre): What we are talking about now, Mr. Spallino, is the Five and Over Club. I don't want to go over all the testimony that we had yesterday.

A. Well, that the Five and Over had a perfect right to distribute leaflets the same as the——

Q. Did Mr. Collins state to you that the leaflet was to be distributed by the Five and Over Club?

A. Yes, signed by the Five and Over Club.

Q. Now, had the Five and Over Club before this time distributed any literature in the plant?

(Testimony of Charles Spallino.)

A. Well, we have distributed such as the minutes of the meetings that we have had to—so that the members that were [400] not present at the meeting would know what went on at the meeting, and such as that, or notices of special occasions such as dances or things of that order.

Q. About how often did those notices and minutes and so forth go out from the Five and Over Club?

A. Well, I would say every month or two months or so, whenever we would have some sort of a report.

Q. Over how long a period of time was that going on?

A. Well, most of the time, when we had a real big business meeting.

Q. What I mean is the having these leaflets and so forth distributed, was that for the past twelve or ten years or how long?

A. No, for any meeting that followed—say for instance we had a meeting tonight, well, the secretary would get some leaflet printed and give the minutes and details of what went on at that meeting so that the members would know what went on at the meeting.

Q. What I am asking you, Mr. Spallino, is how long has this been going on?

A. Well, this has been going on, that is with this secretary is about the first time, to notify all members of the preceding meetings, that is 1945, this

(Testimony of Charles Spallino.)

fellow here seemed to have an idea of his own to let the members know, this secretary that I had. It was his idea. [401]

Q. Let me ask you this: When this literature of the Five and Over Club was put out, was that written in longhand or was it typed or was it printed?

A. It was on a teletype or whatever you call it in our office.

Q. You mean a mimeograph?

A. A mimeograph.

Q. Where was that material mimeographed?

A. In the personnel office.

Q. Of the Company? A. Of the Company.

Q. When as far as you can remember was the first time you had any of this material mimeographed by the Company?

A. Well, I would say around November. Around November, we usually if we had money in our treasury, we had what we called turkeys for the members, and we naturally put out a leaflet that we wanted a dollar from each member to pay toward these turkeys, and they was all notified around in November. That is when it really started.

Q. November of when?

A. Well, it was near the 18th or 19th, somewhere around there.

Q. What year? A. 1945.

Q. When did you first have minutes mimeographed? [402]

A. Well, this year of 1945.

(Testimony of Charles Spallino.)

Q. Was that in November or earlier than that?

A. Well——

Mr. Garrett: Does counsel mean when this witness first had it done or when did the Five and Over Club first have it?

Mr. Tyre: The Five and Over Club.

The Witness: Minutes?

Q. (By Mr. Tyre): When did the Five and Over Club first have minutes or anything else mimeographed by the Company?

A. Let's see. I would say around February or March, around that time, we had some of the minutes on the floor.

Q. Of 1945? A. Of 1945.

Q. How often did that Club have its meetings?

A. Every second Thursday of each month.

Q. Were the minutes of each meeting mimeographed in that way every month after February?

A. Not regularly.

Mr. Collins: Objected to as having been asked and answered two or three times now.

The Witness: Not regularly, just special occasions, if there was something very important voted on it went on the printing.

Q. (By Mr. Tyre): As far as you know, Mr. Spallino, had the Five and Over Club ever had any of its material [403] printed outside the plant before?

A. No, outside the dance tickets, nothing.

Q. Did Mr. Collins tell you why he wanted this particular leaflet printed outside the plant?

(Testimony of Charles Spallino.)

A. Because that was supposed to be——

Q. I asked you did he tell you why?

A. Yes.

Q. What did he say?

A. He says so that it won't be like the Company is in on it that it is all in the Five and Over's hands, they have done it on their own.

Q. You stated that Mr. Collins told you to get Mr. O'Keefe's approval. Did you obtain his approval on the leaflet? A. No.

Q. What did you do with that leaflet when you left Mr. Collin's office?

Mr. Collins: Objected to as having been asked and answered. He said he went to Mr. O'Keefe's office and Mr. O'Keefe started to make corrections on it and finally called for his secretary.

Mr. Tyre: I don't think it has——

Trial Examiner Kent: I think I remember that, yes. He started to make his own corrections, then he decided to make a speech later on. Was the leaflet ever printed?

The Witness: Never. [404]

Trial Examiner Kent: I think the record is quite clear. That was my recollection, that O'Keefe started to make certain corrections and alterations and then decided rather than let the leaflet be used that he would make a speech to the employees.

Mr. Collins: I now make the same motion I made yesterday, and I move to strike the testimony concerning the leaflet out on the ground that it was never printed and never used, therefore it could not

(Testimony of Charles Spallino.)

have been shown to have any influence on anybody and it does not tend to prove or disprove any issues in this case. It was never used.

Trial Examiner Kent: The motion will be overruled, the motion to strike. The record may remain.

Q. (By Mr. Tyre): Let me ask you this question; I don't think it was answered. Did you see Mr. O'Keefe about this leaflet on the same day you saw Mr. Collins, or was it the next day?

A. No, that was the following morning.

Q. I see. What time of the day did you see Mr. O'Keefe the following morning?

A. The first thing in the morning. First shortly after eight o'clock.

Q. And Mr. Levascos I think you testified was with you at that time. After you left, by the way, was anyone else in Mr. O'Keefe's office that morning besides you and Mr. [405] Levascos and Mr. O'Keefe?

A. Mr. Collins was in there. You mean the time of this leaflet?

Q. Yes, when you discussed this leaflet with Mr. O'Keefe.

A. Mr. Collins and later the secretary.

Q. After you left Mr. O'Keefe's office, right after you left, did you have any further conversation with Mr. Collins and Mr. Levascos?

Mr. Collins: Objected to as having been asked and answered.

Mr. Tyre: What was the answer?

(Testimony of Charles Spallino.)

Mr. Collins: I think I made my objection to the Examiner, Mr. Tyre.

Mr. Tyre: Let us have the answer.

Trial Examiner Kent: He may answer.

The Witness: What was it?

Mr. Tyre: Read the question.

(Question read.)

A. Well, that was later. That was later in the day.

Q. (By Mr. Tyre): What time was that meeting with Mr. Levascos and Mr. Collins?

A. Well, that was in the afternoon, around two o'clock, anywhere around two or three o'clock.

Q. How did you happen to be called up to Mr. Collins' office at that hour? [406]

A. At that hour, I was in the lunch stand and Johnny Levascos came after me, and said that they were going to call a Five and Over meeting and for us to go up and see Collins.

Q. What did you happen to be doing at the lunch counter at that time?

A. Well, I had taken over there because I had made changes in this lunch stand, I had fired the help that I had there and I had new help there, so I stayed at this lunch counter for about three days to get it operating.

Q. Was this at lunch time?

A. Well, it was near to the two o'clock recess that we had.

Q. The Five and Over Club operates this lunch stand, is that right? A. Yes.

(Testimony of Charles Spallino.)

Q. How long were you with Mr. Collins and Mr. Levascos on this occasion?

A. Oh, I was there about twenty-five to thirty minutes, around there.

Q. Was there any discussion at this meeting with Mr. Levascos and Mr. Collins as to what should be said in this speech to be made to the Five and Over Club?

A. Well, he started off suggesting to me——

Q. Answer yes or no. [407] A. Yes.

Q. What was said?

A. That he suggested I would make a speech.

Q. By "he" who do you mean?

A. That Collins suggested that I would make a speech to the members of the Five and Over.

Q. Did he suggest to you what you should say?

A. He started to dictate and I interrupted and I told him I didn't think that I was going to make a speech, because the members elected me in office in good faith and I could not be dictating to them.

Q. Just a minute, Mr. Spallino. Did he tell you what you should tell the Five and Over Club Members? A. Yes, he said——

Q. What did he say?

A. He said that the CIO was a radical organization, a bunch of communists, that they were going to give us nothing but trouble, that the A. F. of L. was our only salvation, because no matter what the CIO would promise they still could not—well, I don't remember the exact words he used just now, but he used a very fancy word, being that we were

(Testimony of Charles Spallino.)

three men together, and he told me "Are you scared to make this speech?" I says, no, I am not scared. These fellows put me there in good faith and I am not going to dictate to them which labor union is best for [408] them because I don't know which is best, because I never was a union man myself.

So Levasco, being that he had been a union man before, volunteered for this speech, so we finished, Collins had finished dictating the speech and so it was understood that Johnny Levascos was going to make the speech and I left Collins' office, and that is when Levascos suggested that we should go out and get a shot of whiskey.

Trial Examiner Kent: I think we are getting repetitious.

Mr. Tyre: All right.

The Witness: It was good, too.

Q. (By Mr. Tyre): I think you testified that you had a conversation with Mr. O'Keefe in his office in the morning sometime after the election, is that right? A. Yes.

Q. What day was that?

A. That was the following Monday after the election.

Q. Did Mr. O'Keefe state anything to you at that time about the CIO?

Mr. Collins: Just a minute. I object to that question upon the ground it does not tend to prove or disprove anything at issue in this case. What O'Keefe would tell one individual employee in his

(Testimony of Charles Spallino.)

private office certainly could not have any effect on some five hundred others on the outside. [409]

Mr. Tyre: I will withdraw the question. I think it has been asked and answered. I don't want to be repetitious.

Q. (By Mr. Tyre): Do you recall any time in January of 1946 after the election, Mr. Spallino, whether or not Mr. Collins made any speech to all the employees? A. He did.

Q. Do you recall what time of the day that was?

A. I think it was twelve-thirty, right after the lunch hour.

Q. Right after the lunch hour? Was that during working hours? A. Yes.

Q. Where did this speech take place?

A. In the front near the office.

Q. And were all the employees assembled there?

A. They were all assembled there, yes, sir.

Q. And how did he speak to them, was it with or without a microphone?

A. No, he had a microphone.

Q. He spoke over the loudspeaker system?

A. That is right.

Q. Will you tell us what he said?

Mr. Collins: I have the speech here if you would like to have it. [410]

The Witness: Maybe I will refresh my memory.

Mr. Tyre: Upon receiving that assurance we will withdraw that question. Nothing was said yesterday about that speech.

(Testimony of Charles Spallino.)

Trial Examiner Kent: No, I don't recollect hearing about that.

Mr. Collins: You might as well ask him though. I want to ask him a few questions on cross-examination on what was going on outside the factory while that was going on, so I would like to have something to cross-examine on.

Mr. Tyre: Withdraw the question.

Mr. Collins: Very well.

Trial Examiner Kent: Well, are you through? It is about ten minutes to twelve. Supposing we come back at a quarter of two rather than just get started with another counsel.

Mr. Collins: Is all the direct examination of this witness through now?

Mr. Tyre: I don't know what you mean by direct examination. My examination of the witness at this time is completed, subject to recalling him if anything comes up.

Trial Examiner Kent: We will adjourn then until a quarter of two. I don't think it is worthwhile probably to start another counsel's cross at this time. [411]

And gentlemen, let's try to come at a quarter of two.

(Whereupon, at 11:50 o'clock a.m., a recess was taken until 1:45 p.m.) [412]

After Recess

(The hearing was reconvened at 1:45 o'clock p.m.)

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. The CIO Union from time to time passed out various handbills in and around the factory of O'Keefe and Merritt and Pioneer Electric Company, did they not?

Mr. Purver: I object to that. I see no relevancy to a question as to whether the CIO passed out handbills.

Mr. Collins: This is cross-examination. I am not under any obligation to disclose the relevancy of my remarks on cross-examination.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Question read.)

A. Yes, they did.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Collins): I will show you a handbill which is purported to be issued by the Local 1981, U.S.A., CIO, 41 East Slawson Avenue, Maywood, California, entitled 'The Facts. I will ask you if you ever saw that handbill, Mr. Spallino? [413]

Mr. Purver: I don't see what this can prove in

(Testimony of Charles Spallino.)

regard to the case. I am objecting on the ground I don't see what this document can prove. It is not only conceded that the CIO did pass out handbills and leaflets, it has been testified to that effect.

The Witness: I never seen that.

Q. (By Mr. Collins): You have never seen that? A. No.

Q. Very well.

Trial Examiner Kent: By the way, Mr. Collins, you may wait until you are putting in your own case, but these two exhibits that you handed to the reporter, I think when you are putting in your own case, I suggest that they be marked.

Mr. Purver: May I also humbly suggest that we be given an opportunity to see the exhibits. You referred to two exhibits.

Mr. Collins: They were made in connection with the motion for continuance, and I don't believe that they are literally and actually exhibits. They are in support of my application.

Trial Examiner Kent: Since they are not offered, you will have an opportunity to inspect them before they are received.

Q. (By Mr. Collins): Mr. Spallino, your brother, I believe, [414] is named Joseph Spallino, is that right? A. That is right.

Q. He was the plant superintendent of the Pioneer Electric Company, was he not, during the war?

A. He was.

Q. And he is now plant superintendent of Pio-

(Testimony of Charles Spallino.)

neer Electric Company in the plant of the O'Keefe and Merritt Company, is that right?

A. Well, according to the new set-up there, he is.

Q. And you have a brother, do you not, who is a foreman at the O'Keefe and Merritt Company or the Pioneer Electric Company, whichever name you prefer to call them by?

A. Well, under the new, it is the Pioneer Electric he is working for, Pioneer Electric now.

Q. Isn't he the foreman of one of the departments there? A. He is.

Q. I believe that you testified that you are the former president of the Five and Over Club?

A. That is right.

Q. Isn't it part of your duties as president of the Five and Over Club to run the lunchroom or be generally in charge of running the lunchroom?

A. I am responsible for it.

Q. You had to spend a lot of your time on that work, did you not? [415]

A. That is right.

Q. Did you supervise the buying of these various articles that you sold, is that right?

A. Well, I looked into it.

Q. And you had to be sure that the employees of the Five and Over Club lunchroom were not stealing the money and see that the people got charged for everything purchased, is that so?

A. That is right.

Q. It was also part of your duties, was it not, to see that the various cigarette vending machines

(Testimony of Charles Spallino.)

around the plant were filled with cigarettes, whenever you could get them?

A. No, I merely O.K.'d the order of the fellow who had the permission to have them in the plant.

Q. How about the candy vending machines?

A. That is the American Legion's doing.

Q. Hasn't that from time to time been a concession of the Five and Over Club?

A. It was at one time.

Q. And it is the duty of the president, generally speaking, to supervise that sort of operation and to see that there is candy in there when there is candy available?

A. No.

Mr. Tyre: I will object to the—just a minute. I object to that unless the time is stated, inasmuch as the [416] witness has said it is not now.

Trial Examiner Kent: You may show the time in which these various things occurred.

Q. (By Mr. Collins): Do you recall when the Five and Over Club was founded?

A. In 1935.

Q. Were you one of the charter members of it?

A. That is right.

Q. And all during that time you have either been an active member or an officer of the Five and Over Club, isn't that true?

A. That is right.

Q. So all during that time it has been part of your duties as an officer and an active member of the Five and Over Club to go to various parts of the O'Keefe and Merritt plant to take care of your

(Testimony of Charles Spallino.)

duties as an officer of the club, isn't that true?

Mr. Nicoson: 1935?

Mr. Collins: I say all during that, either as an officer or otherwise, it has been part of his duties to go about the factory.

The Witness: As an officer, yes.

Mr. Nicoson: I don't think I am getting this. I just wanted to find out if it means from 1935 to date.

Q. (By Mr. Collins): Now, then, Mr. Spallino, at or about [417] the time that this CIO election was held on November 20th, you were an officer of the Five and Over Club, were you not?

A. I was.

Q. It was part of your duties at that time to see that the supplies went in the restaurants, wasn't it?

A. It was.

Q. You had to walk out of your department to go to the restaurant and you had a right to go at any time of the day, as a matter of fact, didn't you?

A. Well, a few times I would get a bawling out for taking up so much time.

Q. You had the right to go, isn't that so, you always were allowed, when you got the bawling out, that is the only thing that ever happened, nobody ever fired you or disciplined you or anything of that kind?

A. Yes.

Q. Wasn't it part of your duties at the time you were talking about the organization work going on to have the employees sign up for their Christmas turkeys?

A. That is right.

(Testimony of Charles Spallino.)

Q. When you talked to Mr. Frank Vacquero, didn't you tell him, as a matter of fact, that you were getting the employees to sign up for Christmas turkeys?

Mr. Tyre: I will object to the question unless a proper foundation is laid as to time and place. [418]

Mr. Collins: This is cross-examination, if the court please.

Trial Examiner Kent: Yes.

Mr. Tyre: Still we want to know the time and place of the conversation upon which you are cross-examining.

Mr. Collins: All right. What is the ruling?

Trial Examiner Kent: He may answer.

The Witness: What was the question?

Q. (By Mr. Collins): Do you recall at the time at or shortly before this election when you had a conversation with Mr. Frank Vacquero, a foreman, one of the foremen of the O'Keefe and Merritt plant, that you told him that you were out of the department by reason of the fact that you were getting the boys signed for their Thanksgiving turkeys?

A. Yes, and further outside the Thanksgiving turkey, I said they just piled up a little more on me, I have to sign them for the A. F. of L., too.

Q. All right. Now, Mr. Spallino, when you were going from department to department around that place and you were signing up for turkeys, you had to go to each individual member of the Five

(Testimony of Charles Spallino.)

and Over Club in the shop, isn't that so?

A. That is right.

Q. And you had to come back frequently because some of them were not there at the time, didn't have the money, isn't that so? [419]

A. Yes, sir.

Q. So you had to run around the factory to sign up for turkeys, among other things, isn't that true?

A. That is right.

Q. As a matter of fact, Mr. Spallino, there is nothing unusual about your being seen in any part of the factory during all the time that you were president of the club, is there?

Mr. Tyre: I will object to that. It calls for a conclusion.

Mr. Collins: If I understand the rules of this proceeding properly, Mr. Trial Examiner, I understood that Mr. Tyre of the C.I.O. had the right to bring out matters which were not brought out on direct examination, but he was not to participate in cross-examination and objections and stipulations and so on. I would like to have a ruling on this at this time. I think that on the first day when this matter was originally brought to your attention, you made a ruling and I believe counsel here are in violation of the ruling.

Trial Examiner Kent: I think he may properly interpose objections. Read the question, will you please, Mr. Reporter.

(The question was read.)

(Testimony of Charles Spallino.)

Trial Examiner Kent: The answer may be taken. You may answer.

The Witness: I didn't understand that.

Q. (By Mr. Collins): Well, what I am trying to get at, Mr. Spallino, [421] wasn't it your custom at all times before this union trouble or anything else to be seen in all parts of the plant going here and there to take care of the club's business?

A. Yes.

Q. Whatever it might be? A. Yes.

Q. So there would be nothing strange for a foreman to see you in any part of the plant, isn't that so?

Mr. Tyre: I will object to that on the same ground.

Mr. Collins: I will rephrase the question.

Q. (By Mr. Collins): The foremen saw you in all parts of the plant at all times, did they not? You have to answer that question, not by nodding.

Mr. Nicoson: Of course, that is a physical impossibility, seeing him in all parts of the plant at all times. I object to the form of that question as being indefinite, and also an impossibility. It cannot be answered. A man can't be in all parts of the plant at all times. Maybe he can, but I have never seen one.

Mr. Reed: That depends on the size of the plant. About two by four he can be.

Mr. Nicoson: At least we know this is 12,000 square feet.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Wasn't it your custom, Mr. Spallino, to be in every department at some time or other every day or [421] nearly every day?

A. No, not every day.

Q. How often was it your custom to be in every part of the plant?

A. Well, the only time, if there happened to be a check to be mailed to a certain member, or sometimes instead of mailing a check, I could find the member who lived near this party that had this compensation check, I would go to the department and find the man who lived near this member and save the trouble of mailing it and get the check earlier by doing it that way.

Q. How often did you circulate about the plant?

A. Well——

Mr. Tyre: I will object to the question as perfectly vague, no time, no place.

Trial Examiner Kent: Well, this is cross-examination. He may answer.

The Witness: Really, my running around the plant in Five and Over work outside of something special was a matter of a few minutes, to go in the office and to sign checks and to hand those checks out.

Q. (By Mr. Collins): I want to know to the best of your ability, I want you to attempt to estimate the number of times that you would go in any department of the plant over a period of, say, a year, beginning January in 1944, when you [422]

(Testimony of Charles Spallino.)

took office as president of the Five and Over Club?

A. 1945.

Mr. Tyre: I object to that as a fact not in evidence. The witness became the president of the Five and Over Club in January, 1944.

Mr. Collins: Well, January of 1945, when he became president, from that time on, how often did you get around?

The Witness: Well, during my campaigning for a dance, to pep it up, it would probably take me a day or so to get my committees active.

Q. (By Mr. Collins): To get back to my original question, it was nothing unusual for you to be in different departments of that plant from day to day, was it? A. No.

Q. Now, when the Five and Over Club had its entertainments, they served beer at the parties frequently, did they not? A. That is right.

Q. Wasn't it part of your duties to see that the beer was ordered and delivered and so on?

A. Well, I would say the treasurer or the secretary saw that it was ordered and delivered.

Q. But you to assist and you had to arrange for the orchestra to play and to get the tickets and so forth, isn't that true? A. That is right.

Q. That is not only true at the time you were president during [423] 1945 and part of 1946, but that has been your custom when you were present on a prior occasion, is that so?

A. That is right.

(Testimony of Charles Spallino.)

Q. Then when you were the vice-president, you had similar duties, is that so? A. Exactly.

Q. You were an officer, I believe, at one time for four years, I believe you said? A. Yes.

Q. So for a period of many years it has been your job as an officer of this club at any time of the day that you chose, practically, to be in any part of the plant, isn't that true?

A. That is right.

Q. Mr. Spallino, do you have any trade or profession?

A. Yes, I was in refrigeration. I was in the repair department.

Q. No, I mean, are you a certified welder or refrigeration engineer, do you have any trade, any accepted trade in that sense of the word?

A. Well, I can call myself a jack-of-all-trades. I have done some riveting there, I riveted half of that plant, I helped cut the metal, I helped lay it out, I done the riveting, bucking up or whatever you call it. I have been in refrigeration department, repaired refrigeration and inspected refrigeration. [424]

Q. Did you ever drive a truck?

A. No, I never drove a truck.

Q. Did you ever work in the shipping department? A. Yes.

Q. What were your duties in the shipping department? A. I was a swamper.

Q. A swamper on a truck?

A. That is right.

(Testimony of Charles Spallino.)

Q. I don't intend to be facetious, but you said you were a jack-of-all-trades. Do you mean by that that you are not the master of any, or that you are the master of all trades?

Mr. Nicoson: I object to that as being immaterial, and not a proper question.

Mr. Collins: These are matters gone into on direct examination.

Mr. Tyre: I don't think we discussed what his occupation was, as a matter of fact.

Mr. Garrett: At the beginning of his testimony.

Mr. Nicoson: That is correct.

Mr. Garrett: He testified as to the nature of his work. I think it is very applicable to find out what his activities are, in view of possible bias and prejudice.

Mr. Nicoson: I have no objection to that, but I do object to the form of the question.

Mr. Collins: On Page 139 of the official transcript of this hearing, [425]

“Q. (By Mr. Nicoson): In what capacities have you been employed?

“A. Oh, I have had at times every department in there, I have worked in. Pretty well refrigeration is the biggest part of my time, I have spent most of my time in refrigeration, and I have worked as a carpenter-helper, as maintenance, and almost everything you can think of. I have even done some building there as a riveter.”

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): I want to know, Mr. Spallino, do you have any trade? Are you a carpenter or a bricklayer or cement man, is there any trade that you have?

A. Well, I don't have a diploma to any of them, those trades.

Q. Mr. Spallino, you and I will get along a lot better if you will just answer my questions. If you have a trade say yes and if you don't have say no. That is all I want. I want an answer.

A. What is a trade?

Q. Are you a bricklayer? A. No.

Q. Are you a machinist? A. No.

Q. Are you a truck driver? A. No. [426]

Q. Are you a refrigeration engineer?

A. No, I am not an engineer.

Q. Are you a refrigeration mechanic in the sense that we employ out there as a serviceman?

A. As far as this place is concerned, I am.

Q. You feel qualified to get out as a serviceman?

A. That is right.

Q. You have worked, I believe you said, as a swamper on a truck? A. That is right.

Q. What was the last job you had at O'Keefe and Merritt Company?

A. Oh, I was repairing motors up until last Wednesday. They sold the job right from under me.

Q. You have not been able to go back to work since Wednesday, anyhow?

A. I don't have a job when I get back. As far

(Testimony of Charles Spallino.)

as I know it will be a new job, because the job was sold.

Q. That is the reason I am asking these questions, Mr. Spallino, so that I may try to decide where you are going to go back to work, I am trying to specifically find out what you can do.

Mr. Tyre: Just a minute. I am going to object to that as an improper purpose, and this examination won't be material to the issues here involved.

Mr. Collins: Article IV under Section 8 of the Act itself, the rules of this court, say that the discharge or otherwise discriminate against. I am very carefully laying the foundation for that kind of a job this man is able to do when he gets back, and I want to provide for him if the job is not there.

Trial Examiner Kent: There are no such allegations, of course, in the complaint, so I don't think that you have to meet that.

Q. (By Mr. Collins): I believe you testified, Mr. Spallino, that your brother brought you up to my office in the presence of Mr. W. J. O'Keefe at the time when you originally affiliated yourself with the C.I.O. Do you recall that testimony?

A. That is right.

Q. At which time I think you testified that you were dissatisfied with the working conditions, and so on, and you made those statements in front of your brother and in front of Mr. W. J. O'Keefe, who, at that time, was plant superintendent?

A. Of Pioneer Electric.

(Testimony of Charles Spallino.)

Q. Well, Mr. O'Keefe was plant superintendent of O'Keefe and Merritt, wasn't he?

A. Joe was superintendent of Pioneer Electric at that time.

Q. Now, there has been a change where Mr. O'Keefe is doing something else and your brother is now superintendent of [428] Pioneer Electric, isn't that the situation?

A. Well, from what I understand, he is Pioneer now.

Q. In fact, in that conversation didn't you state that you were receiving 90 cents per hour when you were hurt? A. When I was hurt?

Q. At the time that you were injured, wasn't your daily 90 cents per hour?

A. At the time that I was hurt?

Q. Yes.

A. I believe I was making 85 cents an hour.

Q. 85 cents an hour, that is right, at the time you were hurt. When were you hurt?

A. That was somewhere in 1942.

Q. In the spring or the fall or the summer, do you recall?

A. It could have been in the spring.

Q. Now, then, when you came back, they gave you a job which paid \$1.25 to \$1.35 an hour?

A. No, not right off the bat.

Q. When you went to work weren't you receiving \$1.25 and weren't you receiving \$1.35 an hour?

A. I was not.

Q. How much were you receiving?

(Testimony of Charles Spallino.)

A. On night work I was making six cents more than my day rate.

Q. What was your day rate? [429] A. 85.

Q. How long after you came back to work did you get \$1.35 an hour?

A. The time that I got that \$1.35 is a time later; can I repeat the whole story, how much I got, and what job?

Q. Well, if it isn't too long.

A. It will take a little while.

Q. I think we will get along faster if you will just answer the questions. How long was it after you came back to work that you were getting this \$1.35?

A. I would like to repeat the whole story. It is very interesting.

Q. If anybody wants to hear the interesting story, your attorneys will ask you for it. I just want to know how long it was after that.

A. I would say it was a matter of a month, maybe.

Q. About a month after you came back from being sick? A. Yes, I got a piecework job.

Q. When they put you on the night job, didn't the plant superintendent, Mr. Bill O'Keefe, offer to make you a foreman?

A. Well, sort of an inspector.

Q. I am asking you now the direct question, didn't he tell you he was going to make you a foreman?

(Testimony of Charles Spallino.)

A. Yes, he wanted me to be head of the department.

Q. So he did offer you a job as foreman at that time, didn't he? A. Yes. [430]

Q. Now, I believe that at the time of this original activity of yours where you went out to the CIO meeting on Sunday, I think you testified that was while the war was going on, isn't that so?

A. It could have been, yes.

Q. While you were working on generators. Are you able to fix a date of that, and what type of operation you were doing?

A. I was not working on the generators at the time.

Q. What were you working on?

A. Well, at that time I was working as a layout man in the front end of the shop.

Q. That was war work, was it not?

A. I suppose it was.

Q. Work in connection with the war effort?

A. Yes.

Q. And you knew, of course, that O'Keefe and Merritt were manufacturing a generator that was used in connection with radar, did you not?

A. I don't know anything about radar.

Q. Didn't you know that they used those generators to generate the power to operate the radar plants on ships and isolated islands all over the world? [431]

A. I don't know about radar. I know that it

(Testimony of Charles Spallino.)

generated power in radio and so forth, but they used it for—I don't know anything about radar.

Q. You did know we didn't want any labor trouble or strikes during the war to impede the war effort, did you not?

A. That is right. We have been fighting all unions.

Q. Whether we were fighting them or not fighting them, we didn't want to have any strikes or labor troubles during the war; answer yes or no? He can't get your nods. A. Yes.

Q. Now, when you came into my office and talked to me, you had those facts in mind, did you not, that we were engaged in a war, you knew that?

A. Yes.

Q. And I am a member of this Five and Over Club too, am I not? A. Yes, that is right.

Q. So as a matter of fact, I am one of the charter members? A. You are a charter member.

Q. Isn't it one of the rules and regulations and part of the constitution of the Five and Over Club that any member can make a speech any time he wants to?

Mr. Tyre: Just a minute. I will object to that. If there are any written rules and by-laws in the constitution of the Five and Over Club, they are the best evidence, and let's [432] have them in the record.

Mr. Collins: It would unnecessarily clutter up the record. There are no rules of evidence before

(Testimony of Charles Spallino.)

this Board at all, says he, and such a rule seems to me ought to work here.

Mr. Tyre: I think it would be dangerous, if the court please, to start permitting evidence of conclusion of witnesses on matters which can be directly proven by printed material. I think the printed constitution and rules of the club is what we ought to have in the record, not have some conclusions as to what those rules say.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. Spallino, isn't it customary for any member of the Five and Over Club to get up and make a speech if he wants to?

A. That is right.

Q. As a matter of fact, I have made a lot of speeches in the Five and Over Club, have I not?

A. You made the first one.

Q. That was long before we ever heard of the CIO, isn't that true?

A. That is right.

Q. I have talked about dances and I have talked about picnics and I talked about giving O'Keefe an award of merit, [433] the American Legion flag, and any number of things that the Five and Over Club has sponsored I have talked about, isn't that true?

A. How is that again?

Q. I have probably made 50 speeches at that Five and Over Club, isn't that so?

A. I wouldn't say that many.

(Testimony of Charles Spallino.)

Q. About how many? It seems that many.

A. I have heard maybe about half a dozen, when we organized, and when we were holding our meetings there, I heard you present the by-laws to the Five and Over Club and the—told us what the Five and Over was originated for, and on different occasions of presentation of the Naval E and all that, you made a speech there. I think I have heard about five or six of your speeches.

Q. Now, then, Mr. Spallino, the Five and Over Club also had a grievance committee machinery?

A. That is right.

Q. And it was part of your duty, was it not, it was part of the duty of the president, I mean, to go into the various departments of the company and to act as the grievance man for each department, isn't that so? A. That is right.

Q. So in the time that you were president of the Five and Over Club, you did go into these various departments and did [434] select committeemen for this grievance committee, isn't that true?

A. That is right.

Q. And it was also the custom of the club, was it not, when they had a grievance that could not get settled by their foreman, to go to Bill O'Keefe and bring them into me occasionally?

A. I was told to bring them into Mr. O'Keefe, because Mr. O'Keefe was——

Q. Mr. O'Keefe, Sr. or Jr.? A. Senior.

Q. And there were many occasions when griev-

(Testimony of Charles Spallino.)

ances were brought by the Five and Over Club grievance committee to me?

A. I think on a couple of occasions they were brought up to you. I brought them up myself.

Q. So when your brother brought you up, whatever the occasion was, to my office to take up your grievance, that was in line with what we had been doing all along on other occasions, is that it?

A. Yes, but I was bawled out for going to a CIO meeting.

Q. You were not bawled out in my office, were you?

A. Well, you were working through my brother.

Mr. Collins: I move that that answer be stricken out on the ground it is not responsive. This witness doesn't know who is working through his brother. May that part go out? [435]

Mr. Nicoson: I think that is a proper answer. That is exactly what he asked for.

Mr. Garrett: Let us have the question and answer reread.

(The record was read.)

Trial Examiner Kent: It may be stricken. You can go into it on redirect.

Q. (By Mr. Collins): As a matter of fact, you were having a little fight with your brother at that time, weren't you, Mr. Spallino?

A. I haven't had any fight with my brother.

Q. Not even yet? A. Not even yet.

Q. What do you call those little discussions, do

(Testimony of Charles Spallino.)

you just call them little family discussions you had been having with Joe?

Mr. Tyre: Just a minute. I object. There is no testimony thus far about family discussions, this trouble Mr. Collins is talking about.

Mr. Collins: He had a little discussion in my office with him.

Mr. Tyre: Let's confine the question to the particular discussion.

Q. (By Mr. Collins): Had you had other discussions with your brother besides the one you had in my office? [436] A. Yes, he said——

Q. Just answer the question yes or no. Let's don't get into some argument now. A. Yes.

Q. Would you characterize those as heated discussions?

A. Well, they were kind of heated we had.

Q. Almost to the point of actual physical combat with him there, with your brother, isn't that true?

A. Combat. Say, we are getting out of line now. Now you are going into something I am not familiar with.

Q. Did you almost have a fight with your brother?

A. We are talking about the time that I came into your office after that CIO meeting, that is what I am talking about right now.

Q. Mr. Spallino, I am conducting the cross examination. If you will confine yourself to answers to what I ask, and then let your counsel or either of

(Testimony of Charles Spallino.)

the counsel on the other side of the table straighten it out if that is not right.

A. I don't think my counsel know anything about those things.

Mr. Nicoson: I will have to admit the colloquy here has indicated the question is unintelligible to the witness.

Q. (By Mr. Collins): Mr. Spallino, have you had a fist fight with your brother in the last year?

A. Never.

Q. Have you almost had one? [437]

A. No. We talked——

Q. Have you sworn at each other?

A. No.

Q. You have had some pretty severe arguments, though?

A. Well, we argue just like regular Italian people do. We have argued.

Q. I see. At the time that you came into my office you just had one of these regular Italian arguments with your brother, is that true?

A. He was arguing with me.

Q. I think that you testified that I asked you what was the trouble, is that true?

A. No, you wanted to know why he was arguing with me.

Q. I am just asking my question, did I ask you what was the trouble? Is that true, did I say that to you? A. No.

Q. Didn't I ask you what was the matter with you, or words to that effect? A. Yes.

(Testimony of Charles Spallino.)

Q. Did I threaten you with any sort of disciplinary action if you didn't answer that or did I try to straighten the trouble out for you and get you a raise?

A. Well, I will tell you, you was always confusing me there for a while, because you went to Joe and Joe says to me that you had talked to him—— [438]

Mr. Collins: Just a moment. I move this be stricken out as—on the ground it is not responsive. This witness doesn't know whether I met Joe.

Q. (By Mr. Collins): Was there any way that I was going to do anything to you for not answering, Mr. Spallino?

Mr. Tyre: I will object to that. That calls for a conclusion.

Mr. Collins: I will withdraw the question. Strike the question.

Q. (By Mr. Collins): Did I ask you what your trouble was? A. Yes.

Q. And your trouble was that you were not getting enough money, isn't that right?

A. Yes.

Mr. Tyre: I will object to that. Just a moment. He has not stated whether that was the question he asked him, whether that was in Mr. Collins' mind at this time or later. It is obvious this witness can't testify.

Trial Examiner Kent: This is cross examination, of course. You may answer.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): What was your trouble?

A. Well, my trouble was I was not making the right wages, and I had a settlement coming from my accident which the doctors told me that my claim was in San Francisco office for the last three months, and I inquired and found out that the claim had [439] never been put in, and the doctor kept telling me it was in, and I talked to you about that case not so long before, and you had told me to go to the Commissioner's office, at the Labor Commissioner's office or whatever you call it. I lost two days to go down there and find out that the doctor hadn't turned in a claim, he kept telling me well it is in and I will get at it and stalling me off for over six months, and I told you that I was not getting any settlement and my arm was in bad shape, and I could not do the work that I had.

Q. Did you finally get that trouble settled?

A. Yes, after I took care of it.

Q. I see. Now, then, the next time I believe you testified you came to my office was when you had a conference, when Johnny Levascos brought you in, is that true? A. That is right.

Q. Did Johnny Levascos ask you to come up there, or did you ask Johnny Levascos to come up?

A. He says let's go see Collins.

Q. When did you first join the A. F. of L.?

A. The A. F. of L.?

Q. Yes. A. I never really joined.

Q. When did you first join the C.I.O.?

(Testimony of Charles Spallino.)

A. At the time I joined, well, when it first came out there.

Q. You mean two years ago? [440]

A. I had signed an application. I have never been a paid-up member until after the election.

Q. But you had signed an application or whatever you did over two years ago, is that correct?

A. Sure.

Q. So at the time when you were arguing for the A. F. of L., you were actually a member of the CIO, isn't that so?

Mr. Tyre: I will object to that. That calls for a conclusion of this witness.

Trial Examiner Kent: Yes, I think that calls for a legal conclusion.

The Witness: Well, I wouldn't know.

Q. (By Mr. Collins): Did you at any time sign up with the A. F. of L.?

A. Yes, Johnny Levascos came up to me and I signed.

Q. When was that?

A. That was after the election.

Q. When? A. After the election.

Q. You joined the A. F. of L. after the election?

A. I didn't join. I signed.

Q. Now, when Mr. Levascos brought you into my office, didn't I tell you that you could join any union or work for any union you wanted to?

A. I don't think that was the discussion. I think—— [441]

Q. Wasn't that one of the remarks that was

(Testimony of Charles Spallino.)

made to you, that you could work for any union that you wanted to?

A. No, there was nothing like that said.

Q. You don't recall that? A. No.

Q. You would not say it was not so?

A. No.

Q. Did not I tell you that the company preferred the American Federation of Labor because we wanted to get off the unfair list?

A. That is right.

Q. Didn't I tell you we had been approached by the American Federation of Labor and told we would never get off the unfair list unless they had a contract in that plant? A. That is right.

Q. Didn't I tell you long before or some time before January 1st, 1946 that the O'Keefe and Merritt Company were probably going to have arrangements made with the Pioneer Electric Company?

A. No.

Q. When did I first tell you that?

A. You never did tell me that.

Q. You don't recall my telling you that?

A. No, you never did tell me that.

Q. Are the CIO sympathizers up in the O'Keefe and Merritt [442] Company or the Pioneer Electric Company getting cards signed around there now?

Mr. Tyre: Just a minute. Mr. Reporter, will you read that question?

(The question was read.)

Mr. Nicoson: If the question means within the plant during working hours, I have no objection to

(Testimony of Charles Spallino.)

it. If it means any other place, I think it is immaterial.

Trial Examiner Kent: He may answer.

The Witness: How was that, now?

Q. (By Mr. Collins): Are the CIO members out there trying to get people to join the CIO?

A. Yes, they are.

Q. I suppose they get them during working hours or any other time they can get them, don't they?

A. Oh, they haven't got a chance during working hours.

Q. Do they ever try to get any during working hours? A. No.

Q. Charlie, didn't you ever try to organize anybody during working hours?

A. During working hours?

Q. Yes, during working hours?

A. For the CIO?

Q. For the CIO, yes. A. No.

Q. Didn't you attempt to organize a refrigeration serviceman when you were on a truck with him a few days ago? [443]

A. Did I try to organize him?

Q. Yes, talk to him and argue with him about it?

A. No, I talked to him, telling him what I thought as an American citizen, that the CIO won the election.

Q. I didn't ask you anything about being a citizen.

(Testimony of Charles Spallino.)

A. I am giving you the conversation that I had with the man, if you will let me.

Q. Proceed.

A. I told him that the CIO won the election, and if so, this country is an election country, and that the constitution and by-laws said that that is what we wanted, we got the election, and if we won the election I am going to faithfully do what I voted for.

Q. Did you ask him to join the CIO?

A. I didn't ask him, no, sir.

Q. What were you talking to him about?

Mr. Tyre: I object to that. It has been asked and answered. He just related the entire conversation.

Mr. Collins: Is that all?

The Witness: The reason I had the button on——

Mr. Tyre: Just a minute, Mr. Spallino. Just answer the questions.

Q. (By Mr. Collins): Is that what you told this man all day long?

A. We didn't talk about the union all day long.

Q. Did you at any time ask him to join the CIO?

A. I didn't at any time.

Q. Now, I want to remind you, Mr. Spallino, that you are under oath.

A. That is right.

Q. With the possibility that——

Mr. Nicoson: I object to intimidating the witness.

Mr. Tyre: Counsel knows better than that.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, I want to ask you, did you at any time ask anybody to join the CIO during working hours within the factory out there? A. No.

Q. Not anyone at any time. A. No.

Q. Did you or any other member of the CIO ask anybody to join the CIO during working hours?

A. No.

Q. You don't know of any others at all?

A. No.

Q. The only ones who did anything like that is the A. F. of L.? A. That is right.

Q. Did Mr. Despol ever talk to you about this union?

A. Mr. Despol ever talk to me about this union?

Q. Yes.

A. I have had a lot of talks with Mr. Despol since I have [445] been out on the—I don't know what you call it—in the plant.

Q. What are you out on at the plant? You are still working there, aren't you?

A. I would like to relate the story.

Q. Just a moment. Just answer my questions. Are you not making more money now than you did before this election was held?

Mr. Tyre: I object as immaterial and irrelevant.

Q. (By Mr. Collins): Did you ever talk to Mr. Conway about these proceedings?

A. What proceedings?

Q. The proceedings you are here on now.

A. We are here on what?

(Testimony of Charles Spallino.)

Q. Just answer my question. When did you first talk to him?

Mr. Tyre: I object to that, no foundation laid as to talking to him about what.

Trial Examiner Kent: Well, I suppose it is a preliminary question. He may answer.

The Witness: Yes, I talked to him.

Q. (By Mr. Collins): When did you first talk to him?

A. Talked to him at the time we had a little demonstration out there. I thought I had just as much right as Levascos or anyone else talking to him. Everybody seemed to be talking to one another out there. [446]

Q. When did you first talk to Mr. Despol?

A. Around that same time.

Q. Around the first demonstration?

A. Yes, sir.

Q. You never talked to either of those people before there was a demonstration on?

A. Well, actually talk, no, I think it was on the following morning they stopped and I talked to him. There is no harm in talking.

Trial Examiner Kent: What do you mean by a demonstration?

The Witness: Well, they had a little surprise attack there, or whatever you call it. They had the German soldier there and some union demonstration in A. F. of L. and the CIO, they both had their men there, and you couldn't tell who was who by just the buttons.

(Testimony of Charles Spallino.)

Mr. Garrett: Just a moment. May I have that last response read?

Trial Examiner Kent: The reporter will read it.

(The answer was read.)

Mr. Garrett: Thank you.

Q. (By Mr. Collins): Mr. Spallino, did you ever tell me that you were afraid of getting in bad with the CIO if you did make a speech before the Five and Over Club?

A. I didn't put it that way.

Q. Did you ever tell me you were afraid of them?

A. No, I didn't tell you that way.

Q. Did you tell Mr. Levascos you were afraid of them?

A. I didn't say I was afraid of anything.

Q. Did you tell your brother, Joe Spallino, that you were afraid of them? A. No.

Q. Did you tell any of those that you had been threatened by them? A. No.

Q. Were you threatened by them?

A. I didn't say I was afraid, but I didn't want to tell the men——

Q. Just answer my question. Were you afraid of what would happen to you if you spoke against the CIO? A. I wasn't afraid of nothing.

Q. You didn't tell anybody, though, that you were afraid of them. A. No.

Q. When you were working for the Five and Over Club, getting these turkeys and so on around there, did you punch out, punch the time clock out?

A. No.

(Testimony of Charles Spallino.)

Q. When you were organizing for the A. F. of L., you didn't punch out either, did you? A. No.

Mr. Reed: Mr. Examiner, I would like to have the record show in various instances that they had been organizing for the A. F. of L. That is pretty all inclusive, I think, the testimony that is in the record. It should be organizing for one International under the A. F. of L.

Mr. Nicoson: I won't agree that the record indicates any such thing.

Mr. Reed: That last question, I think, is too all inclusive. I think it is an improper question. What is the ruling on this?

Trial Examiner Kent: Read that objection.

(The objection was read.)

Trial Examiner Kent: I think you can clear that up when you question this witness.

Mr. Reed: The record ought to show by the witness' testimony given that he was organizing for a particular International affiliated with the A. F. of L. The question was improper because he was organizing for the A. F. of L., rather than the testimony that he has given, that he was organizing for a particular International under the A. F. of L.

Mr. Nicoson: I don't agree that the testimony indicates any such thing. I stand on the record, that it indicates the opposite. The witness has testified on one occasion he met several A. F. of L. representatives who were together [449] and they said they would go ahead and swing it and, after they won the election, they would divide the spoils, or

(Testimony of Charles Spallino.)

words to that effect, divide them up to suit themselves.

Q. (By Mr. Collins): Mr. Spallino, were you at any time in good faith working for the A. F. of L?

Mr. Nicoson: I object to that as immaterial.

The Witness: In good faith?

Trial Examiner Kent: Wait a minute.

Mr. Garrett: I think that particularly is a conclusion, in good faith. That is assuming a fact not in evidence.

Mr. Nicoson: It certainly does.

Trial Examiner Kent: You may answer.

The Witness: What was the question?

Trial Examiner Kent: If you don't understand the question, you can inquire what he means. That is true of any question. If you don't understand the question, say so.

The Witness: Can I have that question?

Trial Examiner Kent: The reporter will read it.

(The question was read.)

Mr. Tyre: I will object to that, too, on the same grounds.

Trial Examiner Kent: He may answer.

The Witness: Not in good faith, no.

Q. (By Mr. Collins): Not in good faith. When you went back in the service department, back there in the presence of Mr. [450] Bennett and Mr. Doyle, and so on, what was Mr. Bennett doing when you got back there? What was Bennett doing when you went back there?

A. When I went to work there?

(Testimony of Charles Spallino.)

Q. No, when you went back there to get those slips signed up for the A. F. of L.

A. I didn't exactly go all the way through there. I stood by the railing in the aisleway going into the office, and I called Frank Doyle over and Bennett was there, and they took these in to have these signed. I explained it to them without going into the service department at all. I was just on that railing there, not inside of the service department. You know how that is situated there.

Q. Were you outside of the service department on the stock room department there?

A. It was the office department there, where the long railing separates the aisleway from the office.

Q. So there would be a door between you and Mr. Cole's office, would there not?

A. Yes, sir.

Q. Was that door open or closed?

A. Well, I went through and closed the door, naturally.

Q. From where you were standing, could you see Mr. Cole at his desk?

A. Not from where I was standing. [451]

Q. You don't even know whether Cole was in his office at that time or not, do you?

A. I don't recall right now.

Q. In any event, you could not have seen him and he could not have seen you?

A. I could have seen him and he could have seen me by going through.

(Testimony of Charles Spallino.)

Q. That is, by going through, not where you were standing?

A. Not unless he came to the window.

Q. You didn't see him come to the window and look at you?

A. No, I wasn't paying any attention to him.

Q. Mr. Cole is foreman in that department, the refrigeration service department?

A. Well, if you call him the foreman.

Q. Mr. Bennett is the leadman there, he is not a foreman is he?

A. He told me he was shop steward.

Q. Shop steward for the A. F. of L. or CIO?

A. That is what he told me Wednesday or Tuesday, or when was the last day I worked, Tuesday?

Q. He didn't tell you he was foreman, did he?

A. He said he was shop steward.

Q. You didn't start paying your dues, I believe you testified—have you paid dues into the CIO yet?

A. Yes, I am a paid up member. [452]

Q. How long have you been paid up?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Sustain the objection.

Mr. Collins: Sustain it?

Trial Examiner Kent: Yes.

Q. (By Mr. Collins): When did you quit working for the A. F. of L. in their organizing activity out there?

A. When did I quit working for the A. F. of L.?

Q. Yes.

(Testimony of Charles Spallino.)

A. Well, just right on election day, I would say.

Q. On election day? A. Yes.

Q. Prior to election day, were you working for both unions? A. Working for both unions?

Q. Yes.

A. How do you mean working for both unions?

Q. Well, as an under cover agent for one and ostensibly an agent for the other, I am asking you, in whatever capacity, were you working for both organizations?

Mr. Nicoson: Objected to as to the form of the question. Assumes a fact not in evidence.

Q. (By Mr. Collins): Were you working for the CIO prior to the election?

A. I was working for what I thought was right.

Q. Well, just answer my question and we will get along, [453] Charlie. Were you working for the CIO or not prior to the election?

A. I was working for the A. F. of L. until the election, I said.

Q. You didn't do any work at all for the CIO before the election?

A. Not that I can recall.

Q. Did you talk to Mr. Despol and Mr. Conway about it? A. Yes, I talked to them.

Q. Before the election I am talking about.

A. Yes, I talked to them.

Q. Now, as a matter of fact, the reason that you changed you affiliation from the A. F. of L. to the

(Testimony of Charles Spallino.)

CIO was because you got in a fight with your brother, isn't that so? A. No.

Q. Was that one of the contributing factors, was it because Bill O'Keefe would not give you a raise?

A. No, especially after——

Q. Just a minute. I just want an answer to my question, now. Was it because Bill O'Keefe would not give you a raise? A. No.

Q. Was that one of the contributing factors?

A. No.

Q. Was it because you lost your job? Your job as president of the Five and Over Club? [454]

A. No.

Q. You didn't tell anybody that you were burned up about it and had been double crossed by the employees out there because they didn't re-elect you?

A. It is a long story.

Q. Did you ever tell anybody at any time that you had been double crossed by the members of the Five and Over Club because they did not re-elect you?

A. I did say that it was apparently a cooked up deal, and I might explain that it could be seen that that deal, they didn't know anything about this.

Q. Just answer my questions. Have you told one or two people there that you had been double crossed by the members of the Five and Over Club because they didn't re-elect you?

A. I have reason to believe that.

Q. Did you say that?

(Testimony of Charles Spallino.)

A. Yes, and I have a reason to believe that. A very good one, too.

Mr. Nicoson: I think he can explain his reason if he wants to.

Q. (By Mr. Collins): Didn't you also make a remark that the Five and Over Club had accused you of some irregularity in the distribution of the turkeys, claiming that you gave the big turkeys to your friends and the little turkeys to the [455] others?

A. That is out of the question, because your policies of the Five and Over, that is out of the question.

Q. Is that true?

A. No, that didn't have anything to do with it.

Q. You didn't get angry about that?

A. That isn't the reason why I joined the CIO.

Q. Is that one of the things that you were annoyed about out there? A. No.

Q. It is not? A. No.

Q. Was it one of the contributing factors?

A. If you would like to really know the factors——

Q. I am just asking you questions, now, Charlie. I wish you would answer my questions. Your counsel can enlarge upon it.

A. I would like to see my counsel and tell them the whole story why I became a CIO man.

Q. You will have an opportunity, but just answer my questions. Did that have anything to do with it, the turkeys? A. No.

(Testimony of Charles Spallino.)

Q. The fact you lost your job as president of the Five and Over Club, did that have anything to do with it?

A. No, that is out of the question. Those things—— [456]

Q. Those things did make you mad, though, didn't they?

A. It made me mad because it wasn't a square deal and I can prove it wasn't a square affair, apparently, the way it worked.

Q. Well, it was a secret election, wasn't it?

A. Yes, and the particular other part was that fellows that were nominated for president to run against me was the men, that, well, I could say double crossed me, if I may use that expression. About a week before the nominations they that said they would not run and he says you are going to get elected again, because Bill and I, we are going to see that you will, and there the night of the nominations he said he would take the nomination, and he said I am sorry I changed my mind, I am going to run for president, and he is sitting right here, Bill Wheeler, that is the fellow there. You know if you have the money in your hand, and I haven't got any money. I wish I could really explain the whole story so you would get the whole story.

Q. Go ahead and tell your story, Charlie. I am not stopping you.

A. You are the questioner over there. I never sat up here before. I am not used to this. I am used to working at a bench, not in a court room.

(Testimony of Charles Spallino.)

Q. I will get back to my original question. You were angry because you were not re-elected president of the Five and Over [457] Club?

Mr. Tyre: I object to that question as having been asked and answered.

The Witness: Under the circumstances, I was.

Mr. Tyre: Just a second, now.

Trial Examiner Kent: I sustain the objection. I think that answer has been taken.

Q. (By Mr. Collins): I believe you testified when you were in Mr. O'Keefe's Senior's office and had a conversation with him regarding this speech that was to be made at the Five and Over Club, I think you testified that he looked it over and began to dictate and told you he was going to make a speech.

A. That is right.

Q. As far as he was concerned, he didn't want you to make speeches on the controversy at the Five and Over Club, is that true?

A. That was not a speech. That was a leaflet that was supposed to be.

Q. As far as that was concerned, he didn't want you to put out any leaflets that would put the company into cooperation with the Five and Over Club?

Mr. Tyre: I will object to that as calling for a conclusion of the witness. If he wants to ask you what Mr. O'Keefe said, I will have no objection.

Trial Examiner Kent: Read the Question, please.

Mr. Collins: There is no question. It is just a preliminary. I will withdraw the question and re-frame it. No use our getting into a colloquy here.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Do you recall coming to Mr. O'Keefe's office with a leaflet or something that you were going to put out on behalf of the Five and Over Club?

Mr. Nicoson: Object to that. It seems to me that if that is going to be talked about, it ought to be put in evidence, and I submit it is not in evidence.

Mr. Collins: I will withdraw and reframe the question.

Q. (By Mr. Collins): Do you remember coming into Mr. O'Keefe's office concerning a leaflet?

A. Yes.

Q. Do you remember that Mr. O'Keefe told you in substance that he didn't want you to put out any leaflets on behalf of the company through the Five and Over Club, O'Keefe did not want you to put that leaflet out, in other words, isn't that so?

Mr. Tyre: Just a minute. I will object to that. That calls for a conclusion. The witness has testified and stated what Mr. O'Keefe said.

Mr. Nicoson: I join in the objection, with the later objection, I didn't make objection to it before, but I do now.

Mr. Collins: Mr. Trial Examiner, if we are going to have [459] strict rules of evidence, then I say we ought not to have them only when I examine. I submit that we have been here two and a half days without any rules of evidence, and now we seem to be getting back to them again.

Trial Examiner Kent: Read the question, Mr. Reporter.

(Testimony of Charles Spallino.)

(The question was read.)

Trial Examiner Kent: He may answer.

Mr. Nicoson: That last part is the part I objected to.

Trial Examiner Kent: Read that last part to me, again.

(The question was re-read.)

Mr. Nicoson: The first part I don't object to.

Trial Examiner Kent: Reframe the question. Of course, you have a double-barrel question there.

Q. (By Mr. Collins): I have got you in Mr. O'Keefe's office concerning a leaflet.

A. Yes, sir.

Q. That is where we are now. Did Mr. O'Keefe tell you that he did not want you to put out that leaflet on his behalf, or words to that effect?

A. Well, after he went over it, he said that he would make a speech instead.

Q. Did he tell you——

A. That I didn't have to do it.

Q. Did he tell you couldn't do it? He didn't tell you you couldn't do it, did he? [460]

A. Well, he says——

Q. Just answer my question, Charlie, instead of attempting to evade it. Did he or did he not tell you you could not put it out?

Mr. Nicoson: I object to this characterization of an attempt to evade. I think that is unfair in counsel, trying to read into the record that the witness is attempting to evade. I submit he is a very willing witness and he is trying awfully hard to answer a

(Testimony of Charles Spallino.)

lot of ambiguous questions that are put to him. I object to that characterization.

Mr. Tyre: Is there a ruling, Mr. Examiner?

Trial Examiner Kent: I think it might be well to avoid personal comments with the witness. [461]

Mr. Collins: Is there a question before the witness that has not been answered?

Trial Examiner Kent: I think there was a question. Read the question to the witness.

(The question was read.)

A. No, he didn't say exactly that. I could not put it out.

Q. (By Mr. Collins): He merely told you that he was going to make a speech, that is what it comes to. A. Yes.

Q. And he didn't tell you to go out and threaten anybody into the A. F. of L. Union, did he?

A. No, not directly he didn't. He said——

Q. Just a minute. Answer my questions. Did he tell you if anybody didn't join the A. F. of L. Union they would get fired or discriminated against? A. No, he didn't say that.

Q. As a matter of fact, he didn't say anything to you that he did not say in his speeches, did he?

A. I don't think he did.

Q. He just said the same in the public speech that he said to you. A. That is right.

Q. Did you go out and threaten people with discharge or discriminatory action if they did not sign up with the A. F. of L. [462]

A. I did not.

(Testimony of Charles Spallino.)

Q. You didn't frighten anybody, all you did was just ask them to join? A. That is right.

Q. As a matter of fact, you told them that they could join the A. F. of L. and then vote for anyone they wanted to? A. That is right.

Q. Nobody at any time ever received any word from you that they would be coerced or restrained in any fashion whatsoever?

A. How is that? I can't understand those words.

Q. I will withdraw the question. I think you made a statement yesterday that you had a conversation with Mr. McMurray.

A. He is not here this morning.

Q. Do you recall what is the date of that conversation? A. The date with Mr. McMurray?

Q. Yes, your conversation with Mr. McMurray.

A. Not the date.

Q. Can you approximate the date?

A. It was soon after meeting Roberts.

Q. And what was the date of your meeting with Roberts, approximately?

A. Well, it was within two or three months prior to the election or before the election.

Q. Two or three months before the election?

A. Very near that. [463]

Q. I believe you testified, did you not, to a meeting in my office when there were a large group of A. F. of L. representatives there? Can you approximate the date of that meeting? That was also prior to the election, was it not?

A. Yes, that was.

(Testimony of Charles Spallino.)

Q. Did I tell you or did I state in your presence that those representatives of the A. F. of L. had approached me and demanded the right to bargain for their members in the O'Keefe and Merritt factory? A. How was that, demanded?

Q. Did I state to you or state in your presence words to the effect that these representatives of the A. F. of L. had come to my office as a representative of the company and requested the right to bargain for their members in the factory?

A. Well, it was sort of a social affair there. I was introduced right and left, and then we discussed a lot of angles which we——

Q. Charley, what I want to know of you, did you hear me at any time say that those people had requested the right to represent the employees of the O'Keefe and Merritt Company, at that meeting?

A. Well, not exactly that way.

Q. Well, if not in those words, did I use words to that general effect, that those men were demanding the right? [464]

A. Well, they represent different locals of the union.

Q. You don't know what happened, Mr. Spallino——

Mr. Tyre: Pardon me. Will you read back that answer? I didn't hear it.

(The answer was read.)

Q. (By Mr. Collins): Did you hear any of them tell me that he represented employees among the electrical workers? A. I think there was.

(Testimony of Charles Spallino.)

Q. Did you hear them tell me that they represented employees in the foundry? A. Yes.

Q. And among the painters? A. Yes.

Q. And you also heard them say that they represented the machinists. A. The machinists.

Q. And various construction workers such as carpenters? A. Yes.

Q. And now, again referring to this leaflet that you took into Mr. O'Keefe's office and which you, I believe, testified was never used, wasn't it the custom for me as a member of the Five and Over Club to assist the members from time to time in the preparation of their by-laws, their articles of incorporation, and the various other legal aspects of the club? [465]

A. Well, I don't know. If I remember right, you have been pretty busy at times, and I don't know whether you have ever been called, that is, on my part.

Q. You knew that I drew them up originally, did you not?

A. Yes, you made the original by-laws.

Q. And you know that I have been called upon from time to time to interpret those by-laws, do you not, for the members of the club?

A. Not since I was president, you didn't.

Q. It was the general practice on occasions when you were an officer, the practice was for me to prepare leaflets and supervise various official documents that were to be used by the club?

A. I don't know the whole story.

(Testimony of Charles Spallino.)

Q. Have there been other occasions when I have assisted you or other officers of the club in the preparation of various documents, speeches, or anything of the public nature in the operation of our club?

A. I don't think so while I was in office.

Q. Do you know of any occasion when you were not in office when I assisted the other officers?

A. Well, I think you probably assisted Bill Cole.

Q. You are getting into party politics now again. He is my brother-in-law. Did you hear Mr. O'Keefe talk to you, did you hear Mr. O'Keefe state at any time that he didn't think much [466] of either one of the unions? A. Yes, he has made that.

Q. And that he thought that the lesser of the two evils was the A. F. of L., did he say that?

A. Yes.

Q. He said he thought he might be able to get something out of the A. F. of L. if he joined with the A. F. of L., isn't that true? A. Yes.

Q. To wit, getting off the unfair list?

A. Yes.

Q. What was the answer? A. I said "yes."

Q. I want to get this very clear in my mind and in the record, Mr. Spallino. There is nothing to keep any member of the Five and Over Club from demanding the right to get up and express his opinion, is there?

A. Well, it all depends on what his opinion is, yes. [467]

(Testimony of Charles Spallino.)

Q. Well, what sort of opinions would you stop a man, as an officer of the club, what sort of opinion would you stop a man from delivering?

A. Well, we would stop anyone who has any opinion according to the conditions in the plant, because everyone would be trying to talk about conditions in the plant.

Q. You mean that was because everyone would try to stand up and make their speech at those meetings?

A. I don't limit them. They just don't talk.

Q. If a man wants to talk about the work he could talk, couldn't he?

A. Once in awhile there has been talk about it, they would get up and talk, and he has always gotten it.

Q. They are still working there, aren't they?

A. They are still working there, so am I working there, but you ought to see the conditions that I am working under.

Q. What conditions are you working under?

A. I have to ask my foremen and the other men to go to the lavatory.

Q. Just a minute.

Mr. Nicoson: Just a minute. The question was asked and I think the witness should be given an opportunity to answer fully.

The Witness: When I came back from the hearing they gave me strict orders whenever we want to leave the department in [468] O'Keefe and Merritt or Pioneer to go to the lavatory, because they

(Testimony of Charles Spallino.)

don't have any lavatory in O'Keefe and Merritt, I have to get permission from the men who have worked there, I had to go to the shop steward and last time he says, "How many times do you go?" and then he took out his watch and he would look at his watch and say, "How many times are you going to go," and then the head man Cole, your brother-in-law there, they ask a fellow how long is he gone and where is he gone.

Q. Are you through with this statement now?

A. Well, I could continue until tomorrow.

Q. Will you please tell the court and myself when you have had an occasion to work since this hearing started. Have you been to work since this started? A. I had two days this week of work.

Q. What are you talking about? The case started Wednesday.

A. I worked Monday and Tuesday. Monday, in facts, I got a bawling out Monday from the Pioneer when I am working for O'Keefe and Merritt.

Q. How many days were you off last week?

A. Last week?

Q. Last week. You said you worked two days.

A. I said this week I worked two days, Monday and Tuesday, and since I came to the hearing, after I came to the hearing I was bawled out by the Pioneer Electric where I am supposed to work for O'Keefe and Merritt. I don't quite get it. [469]

Q. Now, Mr. Spallino——

A. May I continue?

(Testimony of Charles Spallino.)

Mr. Nicoson: I submit he should be given an opportunity to answer the question asked.

Mr. Collins: No, the question has been answered fully. I was asking the man what days he was off right now, and if he is going on and saying a lot more, I would like to have them answer to the question.

Mr. Nicoson: You asked him the conditions he is now working under.

Mr. Collins: The conditions under which he is now working, he has stated that, and this is another matter, counsel.

The Witness: May I get down to the last day—

Mr. Collins: Just a moment, please. Mr. Trial Examiner, would you instruct the witness to answer my questions and not get off on these long winded answers, because I want to get through with this examination.

Trial Examiner Kent: Try to answer the questions briefly and concisely. Of course it is true of all witnesses, if you don't think a brief sort of answer, yes or no, would be the proper answer to a question, you may amplify, but don't feel under any obligation to amplify it.

The Witness: Your Honor, he asked for the answer.

Q. (By Mr. Collins): Mr. Spallino, the question I want answered from you is, "Is it possible for an employee to get up [470] on the floor at the Five and Over Club and make a speech if he wants to do it? A. Sure it is.

(Testimony of Charles Spallino.)

Q. And they permit him to do it, do they not?

A. That is right.

Q. Do the foremen attend the meetings of the Five and Over Club? A. Yes.

Q. They are members of the Five and Over Club as a matter of fact, are they not?

A. Well, at present they are all officers.

Q. Mr. Spallino, will you please just answer my questions now and not volunteer all these alleged witticisms of yours, and we will get through with this thing.

Mr. Nicoson: I object to that criticism of the witness.

Mr. Collins: I will ask you to make an effort to answer and not to keep throwing these extra things into my questions. Mr. Trial Examiner, will you instruct this witness to answer my questions and not volunteer a lot of things. I would like to get through with this thing.

Trial Examiner Kent: Read the question and the answer.

(Question and answer read.)

Mr. Collins: I move that the part that they are all officers be stricken upon the ground it is not responsive.

Trial Examiner Kent: No, I think it is generally [471] responsive.

Mr. Collins: Mr. Trial Examiner, I submit I asked him whether the foremen attended the meetings. The answer would be yes or no. Anything about them being officers or being married men or

(Testimony of Charles Spallino.)

members of some church or club is absolutely extraneous and not responsive to my question. This witness is full of that kind of answers, and I want him to be instructed to answer my questions, and it will shorten the proceeding. It will undoubtedly take some of the amusement out of this proceeding, but it will certainly shorten it.

Mr. Tyre: I think it is incumbent upon counsel, if the Examiner please, to accept the entire answer if the question demanded the answer which he receives.

Mr. Collins: That is true if the answer is responsive. I merely want this man to make responsive answers to my questions. I asked him whether the foremen attended, and he is going into their marital status and political status and that is certainly not——

Trial Examiner Kent: As far as I see the answer, it is responsive. I do think that the witness should pay attention to the question and answer it briefly and concisely as you can. Now, if you think it is necessary to amplify the answer, why you may do that, in order to give a full and complete answer, but don't take that as a hint that you should do that to every question. [472]

Q. (By Mr. Collins): Referring to the Five and Over Club meeting held, I believe it was the day before the election, were any foremen present at that meeting that you saw?

A. You mean the Five and Over meeting before the election?

(Testimony of Charles Spallino.)

Q. Yes, wherein Mr. Levascos made some sort of a speech. A. Oh, yes, they were all there.

Q. They were there. Was I there?

A. I don't think I saw you there.

Q. The Five and Over Club has on other occasions had meetings at 4:30, has it not?

A. Well, on special occasions.

Q. They have had them before, they have had their meetings at 4:30 in the afternoon, is that true? A. On special occasions, yes.

Q. Now, I have heard you in your testimony here frequently say that Mr. Levascos was doing this or Mr. Levascos was doing that during working hours. Do you know of your own knowledge, Mr. Spallino, and I don't mean anything you are going to guess at, do you know of your own knowledge whether or not Mr. Levascos had punched out and was or was not being paid during that time?

Mr. Nicoson: I object to the form of the question, and also the inference that the witness is going to guess at anything. I submit, your Honor, that it is a perfectly improper question, and arguing with the witness, and done only for the [473] purpose of trying to create a false impression in this record of the witness and his answers. I appeal to you to admonish counsel to frame his questions properly, because I am quite satisfied he is capable of doing it.

Trial Examiner Kent: Read that question, Mr. Reporter.

Mr. Collins: I will withdraw the question in the interest of time.

(Testimony of Charles Spallino.)

Q. (By Mr. Collins): Mr. Spallino, do you know of your own knowledge whether or not Mr. Levascos had punched out during any of the times that you said that he was doing work on behalf of the A. F. of L. in the factory?

A. I never did see him punch out.

Q. You don't know that he did not punch out?

A. Well, I don't know that he did not punch out.

Q. You don't know whether he was getting paid for the time or not, do you?

A. I couldn't know.

Q. In connection with those meetings which you attended in my office, wherein there were certain C.I.O. officials present—I mean A. F. of L. officials present, did you ever ask Mr. Despol or Mr. Conway or any of the C.I.O. officials why they did not come out and talk to me also like the A. F. of L. was?

Mr. Nicoson: Objected to as immaterial.

Mr. Tyre: And also argumentative. [474]

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did you ever ask the C.I.O. officials to come and talk to me?

Mr. Nicoson: Same objection.

Trial Examiner Kent: Objection sustained. I can't see the materiality going to meet any of the issues.

Mr. Collins: I don't like to argue with the rulings of the Trial Examiner, Mr. Trial Examiner, but the materiality of it would be that as I see it

(Testimony of Charles Spallino.)

the company would have to treat them both the same. If one of them sat down with me and we spoke and then the other came out and asked the same, the other side could not claim it was unfair merely because they hadn't done likewise. I would be the only one they would call on. It is my job out there to handle these labor matters, as far as you know, isn't it, Mr. Spallino? A. Yes.

Q. (By Mr. Collins): So if the union officials called on anyone they would call on me?

A. As far as I know.

Q. Did you ever come up to my office with either Mr. Despol or Mr. Conway? A. No.

Q. Do you know whether Mr. Conway or Mr. Despol ever came up to my office?

A. Yes, I have known that they have, through hearsay. [475]

Q. Did they ask anybody to come up with them?

A. No.

Q. Did you know that I asked Mr. Conway and Mr. Despol to bring their committee and come up and talk to me?

A. At the election I heard that you did have a few meetings together.

Q. Did you also hear that I asked them to bring their committee and to come up there?

A. I think there was a certain sort of a literature ruling on that, that any of us could, any C.I.O. member could attend.

Q. Do you know whether or not any of them came up? A. No, I don't.

(Testimony of Charles Spallino.)

Q. Didn't Mr. O'Keefe state in one of his speeches that the employees could join any union they wanted to?

Mr. Nicoson: Just a moment. Ordinarily I would not object to that, but since we have the arrangement for putting in the speeches here, which are reduced to writing, I think at the moment it is not a proper time to put the question to the witness, because that is a thing on which there is no evidence here, and I purposely refrained from going into the matter.

Mr. Collins: I will withdraw the question, Mr. Nicoson, and I intend to submit the speeches.

Q. (By Mr. Collins): Didn't I tell you at one of those [476] meetings that the company had no legal right to force anyone into any union than their own choice?

A. That is right. They don't.

Q. And I told you that, didn't I?

A. Yes.

Q. And didn't I tell you we could not discharge or discriminate against anyone for his union activities legally?

A. Not legally. Now, you see I have to get into a story there.

Q. Just a minute. Just answer my question. Don't answer with any stories. I did tell you that, didn't I?

A. That is right, not legally.

Q. Did I ever ask you to meet with me and any C.I.O. officials?

A. No.

Q. You thought it was grossly unfair for me to meet with the A. F. of L., I take it by your testimony, is that true?

(Testimony of Charles Spallino.)

Mr. Nicoson: I object to what he thought. It is immaterial, calling for a conclusion of the witness.

Mr. Tyre: I join in that.

Trial Examiner: He may answer. You can answer.

The Witness: Could I have the question?

(Question read.)

The Witness: That is right.

Q. (By Mr. Collins): Did you ever do anything about having [477] me meet with the C.I.O.?

A. I know that was impossible.

Q. Just answer my question, Mr. Spallino. Did you try to get me to meet with the C.I.O.?

A. No.

Q. You said you knew it was impossible. Did I hear you say you knew it was impossible for me to meet with the C.I.O.?

A. That I could get you to meet with the C.I.O.

Q. Didn't the C.I.O. meet with me?

A. Well, they did so on their own after the election.

Q. Couldn't you have asked them to come up?

A. I didn't even know them that well. I have really got acquainted with them lately.

Q. Did Mr. Conway or Mr. Despol ever tell you in words that they did not want the employees to attend the meetings in my office? Did you hear that Mr. Conway and Mr. Despol did not want the employees of O'Keefe and Merritt factory to come to my office for those meetings?

(Testimony of Charles Spallino.)

A. No, unless when they met outside. I missed a few of those speeches.

Q. Don't you know as a matter of fact that I had three employees, different employees every time I met with the C.I.O. officials?

A. I don't know that.

Q. And the first time you ever heard about that?

A. The first and only time I heard about any meetings is after the election when John Despol and his committee came down to negotiate with you.

Q. Did Mr. Conway or Mr. Despol ever tell you that they did not want any of the Teamsters in their union?

A. Well, he did say something that day out there, when there were the demonstration out there, that the Teamsters and the C.I.O. got along swell because the Teamsters is all under the A. F. of L.

Q. And they stated they did not want them in their bargaining unit, isn't that true?

Mr. Tyre: Just a moment. I am going to object to this, your Honor. I think that this is improper cross-examination.

Mr. Nicoson: I think it is getting a little confused.

Mr. Collins: I think it is most proper cross-examination and very pertinent.

Mr. Tyre: Not to go into it with this witness, your Honor. Mr. Conway and Mr. Despol are in the courtroom, are present and to be examined by Mr. Collins if he desires. This witness was not examined upon that particular subject.

(Testimony of Charles Spallino.)

Mr. Collins: I would like to ask you to read that question, Mr. Reporter.

(Question read.)

Trial Examiner Kent: I will take the answer.

Mr. Nicoson: I submit that calls for a conclusion. If [479] he is asked if Despol told him that, I don't have any objection to that.

Trial Examiner Kent: Read the question again.

(Question re-read.)

Mr. Collins: I will reframe my question, Mr. Trial Examiner.

Q. (By Mr. Collins): Did Mr. Conway or Mr. Despol ever tell you that they did not want the Teamsters in their union, or words to that effect?

Mr. Tyre: Same objection.

Trial Examiner Kent: You may answer.

A. Well, all I have heard John Despol say about the Teamsters, that he didn't care if they were A. F. of L., because they naturally would go A. F. of L. anyway, because all Teamsters belong to the A. F. of L.

Q. Did he tell you that before you went out there in the morning that you have testified to and arranged for this meeting with Mr. Blaney of the Teamsters, or did he tell you that after that?

A. The only time I talked to him was at the demonstration, like I said.

Q. Was that before or after?

A. He asked me a lot of questions. There were two or three days together there. I don't remember that one.

(Testimony of Charles Spallino.)

Q. Was that before or after the election you talked to Mr. Despol? [480]

Mr. Tyre: Your Honor, I wonder if we can have the record show that my objection goes to this entire line of cross-examination as to conversations with Mr. Despol.

Trial Examiner Kent: Yes, the record may show that.

Q. (By Mr. Collins): I will repeat the question. Was this conversation that you had with Mr. Blaney before or after the election?

A. It was before.

Q. Before the election, did Mr. Despol tell you that he did not want these Teamsters then before or after this conversation that you first had with Mr. Blaney?

A. After the election.

Q. Now, did Mr. Despol tell you that he did not want any members of this factory out there except the Stove Mounters?

A. No, he didn't say that.

Q. Did he ever tell you that he would be willing to accept just the Stove Mounters and let the A. F. of L. have all the rest of the employees in the factory?

A. No.

Q. He never told you that?

A. No.

Q. Was this newspaper that is printed by the Five and Over Club, was that printed outside of the factory or is that mimeographed in the factory?

A. Well, that is outside the factory. [481]

Q. So that there were certain things that were printed outside the factory in addition to this one

(Testimony of Charles Spallino.)

little handbill that you were talking about in my office, is that true?

A. Well, the president of the Five and Over hasn't had anything to do with the paper for—in fact, it has been in the hands of one person all the time.

Q. When you were referring to this little meeting in my office, did I tell you to see Mr. O'Keefe or did you suggest that you better talk to Mr. O'Keefe before you published anything concerning the personnel problems in the factory?

A. You suggested that it would be a good idea to let Mr. O'Keefe see that.

Q. This was in the nature of a meeting between members of the Five and Over Club, and this is in my office. There was nobody in that office who was not a member of the Five and Over Club?

Mr. Nicoson: I object to that characterization. It calls for a conclusion. The facts speak for themselves.

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): There was no one in my office that was not a member of the Five and Over Club, was there? A. No.

Q. As I recall, Mr. Spallino, we asked you if I made a speech, and you answered yes I made a speech. I am going to ask you at the time that I made that speech, was at the time [482] while the C.I.O. was holding this surprise attack or demonstration that you have referred to?

A. No, they had, they had the PA system outside too. That was, I believe, if I am correct, I was in

(Testimony of Charles Spallino.)

the lunch stand at that time and unfortunately didn't get to either one.

Q. You didn't hear my speech?

A. I don't recall. I know I missed one or two of the speeches out in front. At the moment I can't place which one that I missed. I know I missed two speeches at the front, or one.

Q. Well, the C.I.O. had had a demonstration on the previous day at the factory at the time the employees were going to work, had they not?

A. I don't remember.

Q. There was one speech the following morning, was there not?

A. I don't know when the speeches was. I don't recall just what speeches it was.

Q. You know that there had been a demonstration before I made this announcement?

A. I can't remember whether the demonstration was before you made that speech.

Q. In connection with the activities of this Five and Over Club, Mr. Spallino, do you recall anything at any time, whether it was a dance or a football game or a baseball game [483] or a beer bust or anything of any kind that the supervisors or any boss of the factory stopped you fellows from doing?

A. No.

Q. Never in the history of the organization did anything like that ever happen?

A. No.

Q. So there was not any influence exerted on you by those foremen who were members of the Five and Over Club?

(Testimony of Charles Spallino.)

Mr. Tyre: Object to that as calling for a conclusion.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Did the foremen themselves ever get up and state that they would take any sort of disciplinary action if certain things were or were not done in the operation of your club activities?

A. No, they never did use that term.

Mr. Collins: That is all.

Trial Examiner Kent: Let's take a recess for five minutes.

(Short recess.)

Trial Examiner Kent: You might proceed, Mr. Garrett, Mr. Reed or Mr. Smith.

Mr. Collins: Mr. Trial Examiner——

Trial Examiner Kent: Are you through?

Mr. Collins: Yes, I am all through, but may I make a statement before we conclude with this witness. I would like [484] to have it for the purpose of the record. In the heat of some of the cross-examination of this witness and various objections being interposed by counsel, I may have made a statement in the record which is not complete enough, and at this time I want to point out the reason for certain questions I asked so that the record may be entirely clear on this point. The record has got some statement by him to the effect that he doesn't know whether he has a job or not. I want to point out that on the other hand it is true that the motors this man has been working on

(Testimony of Charles Spallino.)

have been subcontracted to some other concern, with the employees in the motor department taken over intact into the job, as I understand it, with this subcontractor. As I understand it, this witness will have the opportunity of either going to work at a better job with the subcontractor or he will have an opportunity to go back to work with O'Keefe and Merritt or the Pioneer Electric Company at some job that he can do, based upon his statements here today, and that was the purpose of that question, and if there is any doubt about it at this time, I wish the Trial Examiner would let me know, so that I may continue to ask this witness questions concerning his availability for other work.

Trial Examiner Kent: There are no allegations in the complaint pertaining to discrimination in regard to hire or tenure, which is what I thought the line was looking to, so [485] there would not be any materiality.

Mr. Collins: I might have anticipated future trouble, but I wanted to be sure I know what the witness can do so I know what to offer him.

Mr. Smith: Mr. Examiner, I would like to call your attention to the fact that next week Mr. Schullman and myself have trials on, coming up during this hearing. We are going to ask Mr. Garrett to keep track of that, as he is here, and try to give us as much information as possible, if neither of us can get back Monday.

Secondly, a few of us here, I don't know whether the majority or not, would like the proceedings to

(Testimony of Charles Spallino.)

be terminated at 4:30 today, and I wonder if the Examiner would canvass the attorneys to find out whether or not 4:30 or 5:00 o'clock is preferable with the attorneys present.

Trial Examiner Kent: What was that last?

Mr. Smith: Some of the attorneys would very much prefer that the proceeding terminate today at 4:30.

Mr. Collins: That is agreeable to me.

Mr. Smith: I wonder if the Examiner would see if the majority so desire, whether they all want to adjourn at 4:30.

Trial Examiner Kent: I thought we were going to go until 5:00. I thought I allowed you the half hour.

Mr. Garrett: It is highly desirable to me, if it can be arranged with the consent of the Examiner and of course the [486] agreement of all the parties, to be relieved at 4:30 today, because on this particular day we have that little ceremony that Uncle Sam requires of us once a year, that is, filing the income tax return, and I have an appointment with my accountant in my office, and could very well use the time. This is March the 15th, that fatal day.

Trial Examiner Kent: Well, assuming then we quit at 4:30, can you gentlemen be here at 9:30 Monday morning?

Mr. Garrett: It has got to be a quid pro quo, I can see that.

Trial Examiner Kent: How?

(Testimony of Charles Spallino.)

Mr. Garrett: It has got to be a quid pro quo. I suppose the other attorneys and the witness would be agreeable to take a half hour off on Monday morning in order to give us a half hour this afternoon.

Mr. Collins: That is agreeable with me.

Mr. Smith: Is it agreeable with you, Mr. Nicoson?

Mr. Nicoson: 9:30 Monday?

Mr. Smith: Yes, sir.

Mr. Nicoson: Yes, that is all right with me.

Trial Examiner Kent: You see, you are not giving me a half an hour Monday morning. We really ought to start at 9:30. I think the record shows possibly not as clearly as it should, I realize there are a number of attorneys, and Los Angeles is a fairly large city, and attorneys do have [487] to find some time to contact their clients during business hours, and that representation was made to me, so I did shorten the hearing time somewhat, which means prolonging the hearing by days. I think if we start in at 9:30 then Monday morning I will consent to adjourn this afternoon at 4:30.

Q. (By Mr. Garrett): Mr. Spallino, what was the nature of the injury you received that you testified about?

A. Injury to my body do you mean?

Q. Yes, I mean the injury to your body.

A. The time I had my accident?

Q. You had an accident, did you? A. Yes.

Q. Was that an accident that happened to you while you were on the job? A. Yes.

(Testimony of Charles Spallino.)

Q. And about how long ago was that?

A. Around about 1940—no, it wasn't that long, about three or four, yes, around three or four years ago.

Q. About three or four years ago?

A. Yes.

Q. Can you establish the time any more closely than that?

A. Not offhand. I have been thinking about it.

Q. But it is an injury which preceded the interview you had with Mr. Collins, at which your brother was present and on which you testified, is that correct? [488]

A. That was quite a while back, yes.

Q. And at the time you had this interview you have testified to with Mr. Collins where your brother was present, you were already suffering from that injury, is that correct?

Mr. Nicoson: Object to that. There is no evidence here that he was suffering from that injury at that time. It assumes a fact not in evidence.

Mr. Garrett: All right, I will reframe the question, Mr. Nicoson.

Q. (By Mr. Garrett): Your injury, then, was before your conversation with Mr. Collins where your brother was present that you testified about, because you talked about your injury at that meeting, did you not?

A. Yes, I did talk about my injury at that meeting.

(Testimony of Charles Spallino.)

Q. Your injury was one of the things you talked about at that meeting?

A. Well, it was not exactly the injury. It was the settlement that I had not received when it was supposed to be, and the answers that the doctor gave me, that my claim was in and it was not in.

Q. And the claim was about the injury you suffered?

A. About that injury, yes.

Q. That was an injury you suffered while you were on the job, is that correct?

A. That is correct. [489]

Q. It was an injury to your arm, I think you said?

A. To my arm.

Q. And as a matter of fact that arm never has been as good since the injury as it was before, I think you said, is that right?

A. That is right.

Q. Now, you can't remember the exact time of the injury, except that it was before this conversation with Collins and Joe Spallino, is that correct?

A. Yes.

Q. And at that time your injury had progressed to the point where you were entitled to a rating on the disability, is that right?

A. That is correct.

Q. And this report you are talking about the doctor sending up to San Francisco was a report on the permanent disability rating, is that correct?

A. That is right.

Q. Did you get a permanent disability rating?

(Testimony of Charles Spallino.)

A. Well, after I went to the Board myself and after a length of time, I was called by the Examiner at the hall, or the Commissioner's office.

Q. You went up there and were examined by the doctor there, is that correct?

A. Yes, that is correct. [490]

Q. And thereafter you got a permanent disability rating, is that correct?

A. After that I did.

Q. When you went up and saw the doctor at the Industrial Accident Commission, was that before or after this conversation you had with Collins and Joe Spallino that you have testified about?

A. I had already gone to the——

Q. Now, in connection with that permanent disability rating that you got, did you file any papers at the Industrial Accident Commission?

A. Yes, I did.

Q. Were they the white paper, which is an application for adjustment of claim, or the blue papers, which are an application for an informal permanent disability rating, do you remember?

A. The blue.

Q. You filed the blue papers? A. Yes, sir.

Q. Can you recall whether you ever signed and filed with the Industrial Accident Commission any papers except the blue papers in connection with that injury?

Mr. Tyre: I am going to object to this line of questioning.

(Testimony of Charles Spallino.)

Mr. Nicoson: I didn't ask the witness about that. [491]

Mr. Garrett: I have no hesitancy in telling the Trial Examiner why I am asking these questions. It is because from some of these conversations testified to I deem it desirable from the standpoint of my case to have a fixed point in time on account of related circumstances, and these questions are asked the witness so as to enable me from the records of the Industrial Accident Commission to fix the exact time of the interview that he testified to, which cannot be fixed by the witness himself.

Trial Examiner Kent: I don't see how it helps to fix the exact time. You found it was some date subsequent to the time he filed his papers.

Mr. Garrett: You recall, if your Honor please, that the witness has so far testified variously that the time of this interview was about two years, or first he testified that it was two years ago from the time that he sat on the stand and testified, and then he also testified contradictorily that it was approximately at the start of our participation in the war, and in that connection he mentioned Pearl Harbor. I believe that a variance of two years on an interview under the evidence in this case is too wide a variation. It was either two years ago or it was four years ago. From the testimony of this witness the exact date cannot be ascertained. I think I have a right to inquire so that I can establish by the existence of related documents bearing the seal of [492] the State of California and their filing dates. I be-

(Testimony of Charles Spallino.)

lieve I have a right to establish it with relation to those authentic records.

Trial Examiner Kent: Well, for that purpose, it being cross-examination, I think counsel is probably within his rights. You may inquire.

Mr. Garrett: I will rephrase the question. I think it is hard for the reporter to find.

Q. (By Mr. Garrett): Can you remember whether in connection with that injury and the permanent disability rating you got ready there for signature and filed any papers with the Industrial Accident Commission except these blue papers??

A. The blue papers is all I remember.

Q. They are all you remember, is that correct?

A. Yes.

Q. Now, with respect to your services with the O'Keefe and Merritt Company, I think you testified that you went to work for them 19 years ago.

A. Well, it is almost 19 years, not quite.

Q. At that time was Mr. Cecil Collins employed by them? A. Yes, he was. [493]

Q. What kind of work did you do when you first went to work for them?

A. Well, the first job I had, when we were building, and I was fresh off a construction job and I was on construction.

Q. What was Mr. Cecil Collins doing for them then?

A. I don't think he was a lawyer at that time, and I don't remember what he was doing. I know

(Testimony of Charles Spallino.)

he was a refrigeration man. I believe maybe at that time he was working in the refrigeration department.

Q. He was a refrigeration serviceman; was he not?

A. I believe that is what he was.

Q. Is that approximately the general nature of the duties he was doing?

A. I know he did that. I don't know whether he was doing that at that time, but I know he was a serviceman.

Q. Now, this first conversation that you testified to, that was the one where your compensation claim was mentioned, that is, the claim for your injury, had you at that time signed an application for membership in the C.I.O union? A. No.

Q. It was after that conversation that you signed an application for C.I.O. membership, is that correct? A. Yes.

Q. And where did you sign that application for C.I.O. membership? [494]

Mr. Nicoson: Objected to as immaterial. I will withdraw the objection.

Trial Examiner Kent: You may answer.

The Witness: How was that now? Where?

Q. (By Mr. Garrett): Where did you sign it?

A. Where?

Q. Yes.

A. Well, it was just cards that were issued at that time in pamphlets. I signed one.

(Testimony of Charles Spallino.)

Q. Where were you when you signed up on it?
Where were you when you signed up one?

A. I signed that up at home and mailed it.

Q. At your home. How long was that after this conversation in Collins' office where you talked about your compensation question?

A. I don't remember.

Q. Can you approximate it?

A. Oh, it might have been a couple of months or so afterwards.

Q. Was your compensation claim settled at that time?

A. No, not yet, that I can remember.

Q. Did you thereafter, after signing that application in the C.I.O., did you have any contact with the C.I.O. after you mailed in that application?

A. No.

Q. You mailed it in to them, did you? You received it at [495] your home? Did you receive the application in the mail? A. No.

Q. Somebody brought it to you, some representative?

A. It was handed out as we left the employment.

Q. Now, I think you testified that the Five and Over Club was organized in about 1935?

A. That is right.

Q. How many charter members did you have then?

Mr. Nicoson: Objected to as immaterial.

The Witness: I don't remember.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Well, the record may remain.

Q. (By Mr. Garrett): You can't recall?

A. I remember one picture that was taken very soon after, I think probably that same year, there were 116 members in this picture, a group picture that was taken.

Q. That was about 1936, was it? A. Yes.

Q. And at that time did the Five and Over Club have a committee for settling grievances between its members and the management of the plant?

A. Not at that time.

Q. Not at that time. Now, when Mr. O'Keefe had talked to you about setting up a good grievance committee for the Five and Over Club, in 1945, was that the first time that the Five and Over Club ever had a grievance committee or had it had [496] grievance committees before that?

A. We had them before that.

Q. I see. When you were vice-president of the club, throughout that time, did the club have a grievance committee?

A. Well, it was soon after the A. F. of L. started to picket us. We had a picket line, and we formed a committee around that time.

Q. Now, do you recall in about 1937 you had pickets at the plant, is that correct?

A. I wouldn't say it was 1937. I don't remember the year, but we had A. F. of L. picketers there for quite a while.

(Testimony of Charles Spallino.)

Q. As a matter of fact, the A. F. of L. picketed the plant for approximately two years, did they not?

A. I would say.

Q. You were working at the plant during those two years, is that correct? A. Yes.

Q. And at that time did you hold any office in the Five and Over Club?

A. I might possibly be holding the vice-president job around that time.

Q. And during those two years when the A. F. of L. was picketing the plant, I take it you went through the picket line every day to work, is that correct?

A. Yes, our object was to keep unions out of our plant. [497]

Q. Was that one of the objects of the Five and Over Club when it was first started?

A. Well, that was the backbone of the factory, of the employees.

Q. Well, you have said that before, and I wonder if you would tell me how you know that?

A. Well, it has been told many times that it was the backbone of the plant.

Q. You members of the Five and Over Club at the time it was formed were people who felt that it was not desirable to have the union in the plant, is that right?

A. Well, in a way, you could put it that way.

Q. That was the general feeling of the members of the Five and Over Club, is that correct?

A. How is that again?

(Testimony of Charles Spallino.)

Q. Is that correct?

A. Let me hear that again. I don't want to say too far.

Trial Examiner Kent: Read it, Mr. Reporter.

(The question was read.)

The Witness: Well, I wouldn't speak for the whole club.

Q. (By Mr. Garrett): You said that the Five and Over Club was against unions. How do you know that?

A. I wouldn't say the Five and Over Club was against unions.

Q. Well, now, you recall testifying that it was their object to keep unions out of the plant, don't you? [498]

Mr. Nicoson: I submit that he did not so testify.

The Witness: I am a little confused on there.

Trial Examiner Kent: Wait a minute.

Mr. Nicoson: I object, assuming a fact not in evidence, contrary to the record.

Mr. Garrett: One moment, please. I think I can find that.

Mr. Nicoson: He used the term "we" but I don't think he was referring to the Five and Over Club specifically when he used the term "we" or said "We wanted to keep them out."

Mr. Garrett: I will go to my notes as to his speech on election day. "I told the members that I had worked there for 19 years and we never had had a union and we had always fought the union." When he said "we" it couldn't have been anybody

(Testimony of Charles Spallino.)

except himself and these fellow employees that he was addressing.

Mr. Nicoson: I don't think your interpretation of the word "we" is the proper one.

The Witness: I am talking about the company.

Mr. Nicoson: I suggest that the proper question would be to ask the witness who he had in mind by "we." I certainly do not agree that he was speaking at that time merely of the members of the Five and Over Club.

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right. [499]

Q. (By Mr. Garrett): When the Five and Over Club set up a grievance committee, was the plant still being picketed by the A. F. of L.?

A. Yes.

Q. And then it is a fact, is it not, that the Five and Over Club set up a grievance committee so that they could take the place of an outside union in the plant and settle their grievances themselves for their members with management. That is a fact, isn't it?

A. Well, I am afraid that I don't know. It would take a lawyer, I think, to answer that question I don't know how to answer that. I don't understand that.

Q. Let me put it this way: How did it come about in the first instance while the plant was being picketed by the A. F. of L. that this Five and Over Club established a grievance committee and

(Testimony of Charles Spallino.)

started to adjust grievances with management? How did it come about?

A. Well, I guess on the appearance that the union was out there trying to organize the place, that suggested this. The ruling power of O'Keefe and Merritt suggested that we form a committee reporting to, Bill O'Keefe was the fellow we reported our grievances to for quite a while, so that would come into a big story.

Q. Now, you can just answer my question truthfully and you won't have to tell the story. I will leave out some. [500]

Mr. Nicoson: I object to that characterization, truthfully, and that is argumentative.

Mr. Garrett: All right, I will withdraw that.

Q. (By Mr. Garrett): On this Five and Over Club, you didn't have a grievance committee when you started. That is true? A. No.

Q. To begin with it was just a social club, is that right? You had dances and dinners and what have you, correct? A. Yes, sir.

Q. And I suppose you gave out big turkeys and little turkeys even back in those days?

A. Well, the best we could at that time. Business wasn't so big, so we did the best we could with what we had.

Q. And this best you had was mainly little turkeys, is that correct? And now while this picketing was going on, you set up the grievance committee; that is right, too, isn't it?

A. While this picketing was going on, yes.

(Testimony of Charles Spallino.)

Q. That is right, and you did that because there was an outside union trying to get in there and you wanted the grievance committee set up to stop the union, is that right?

A. Yes, that we didn't need protection from outside, and we could handle our own affairs there.

Q. You could run your own business as employees, and as a part of running your own business as employees, you set up this grievance committee, is that right? [501]

A. To iron out any beefs or grievances that were in the plant.

Q. And you have had it ever since; is that correct?

A. Well, you see, I would have to get in a story there. It has never been an active one from the start, even though there was one.

Q. I see. But whether active or inactive, there has always been a grievance committee connected with the Five and Over Club from the time it was first set up during the strike, is that correct?

A. During the time of the picketing, yes, there was some sort of a grievance committee there.

Q. Did they settle grievances with management just for their own members or between any employees and management?

A. They were supposed to take all.

Q. And in the first years they usually settled those grievances with Bill O'Keefe, I think you said?

A. Well, if they were ever settled.

(Testimony of Charles Spallino.)

Q. It is then a fact, is it not, that the Five and Over Club was against outside unions?

A. Well, I would be speaking for everyone. I wouldn't know what everyone felt. There was an object there to have our own—it was not a union, but our own little family there that—well, the company to see that we had this little thing there, would give us things that we never got before, [502] as insurance and vacations and things that never came up before, so we were better off without the union in our place at all times. We were getting better than——

Q. Is that anything that was said in the meetings of the Five and Over Club, or was it written down in their laws, or how do you know that?

A. Well, that is a good deal—it is part of the politics, if you want the real word for it, it is part of the politics. There is leaders again—I won't explain it. It is a long story.

Q. Are you one of the leaders who set up the Five and Over Club?

A. No. I was always an active member. I worked myself from a bartender up to be president just by being active.

Q. You were always active in it?

A. If I may say one thing, I was told at one time that I was well liked by the men, but I was not well liked by the bosses. [502]

Q. I take it you were a bartender before you went to work for O'Keefe and Merritt, is that right?

(Testimony of Charles Spallino.)

A. No, I was a bartender for the Five and Over Club.

Q. Now, that is very interesting. Is the Five and Over Club's bar still open?

A. We had a lot of beer last night. I lost out.

Q. Oh, you were a part-time bartender yourself. That was just in addition to your regular duties?

A. At our meetings.

Q. When you signed this application with the C.I.O., just before you got your injury claim adjusted, you were still an active member of the Five and Over Club, were you not?

A. I was an active member, you say?

Q. Yes.

A. Yes, I have been an active member since 1935.

Q. And as a matter of fact at the time to which I refer you were vice-president of the club?

A. Not in 1935.

Q. No, but at the time you signed the C.I.O. application.

A. No, I was president.

Q. You were president?

A. That is right. I am getting down to the year now. It is around 1940—I will count on my fingers, '45, '44, '43, '42. '42, that is when I was president.

Q. Well, you testified first that this interview you told [504] us about happened soon after Pearl Harbor.

A. That was at the time of my injury.

Q. When you signed that C.I.O. card in 1942

(Testimony of Charles Spallino.)

you were not against unions any more at that time, were you? A. Well, no, I wasn't.

Q. Your views had changed very much since the days when you went through that picket line back and forth for two years, is that correct?

A. A lot of things happened.

Q. I see. Your views did change. Correct? You didn't any longer feel that it was to your advantage just to have a happy family in the Five and Over Club and no labor union.

Mr. Nicoson: I object to that as immaterial, and I also object to the extent of examination into this thing, which is all immaterial. I don't think it adds or detracts from anything.

Trial Examiner Kent: I wonder if this line is germane to the issues and how it helps us decide.

Mr. Garrett: I think I can show that, if your Honor please. I think the fact who this man is really working for when he does certain things is one of the crucial questions in this case.

Trial Examiner Kent: If your inquiry will be brief and limited to three or four more questions, I will let you proceed. [505]

Q. (By Mr. Garrett): Now, what did you do about obtaining membership in the C.I.O. after you signed that application card for them in 1942?

A. What did I do?

Q. That is right. A. I didn't do anything.

Q. What happened as a result of your signing that card if anything?

A. Well, I just signed it and forgot about it.

(Testimony of Charles Spallino.)

Q. Did you do any organizing for any union after you signed that card?

A. Oh, I probably passed some cards or something.

Q. You were passing out cards at that time too, were you? A. What time was that?

Q. Right after you signed the C.I.O. application card.

A. He has got me all bawled up.

Q. (By Mr. Garrett): Now, wait a minute. You know what I am talking about. It is the time immediately after you first signed the C.I.O. application card, while you were still sore because you hadn't had your personal injury claim adjusted to your satisfaction. That is the time I am talking about. Did you pass out cards then? A. No.

Mr. Tyre: Just a moment. I am going to object. That is a multiple question anyway. Let the counsel break it down and [506] ask one question at a time. It assumes a lot of facts not shown in evidence.

Mr. Garrett: I will withdraw the question.

Trial Examiner Kent: I think the answer is in, isn't it?

(The record was read.)

Trial Examiner Kent: Record will remain.

Q. (By Mr. Garrett): You did not pass out any cards at that time? A. No.

Q. But you passed out some cards, I think you testified——

A. Yes, right after the election.

Q. Right after the election? A. Yes.

(Testimony of Charles Spallino.)

Q. And that was for the C.I.O., wasn't it?

A. C.I.O., yes.

Q. Now I am not talking about after the election which was in November 1945, but I am talking about 1942. Did you pass out any cards then?

A. No.

Q. Did you pass out any cards in 1943 for any labor organization?

A. Not that I remember.

Q. Is it your testimony that you did not remember or that you did or did not?

Mr. Nicoson: I submit that his testimony is in the [507] record and should stand. I object to the attempt to try to change the answer which is already there.

Trial Examiner Kent: On the other hand, this is no cross-examination, and I think probably the inquiry is proper. You may take the answer.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Then, it is your testimony that you do not remember passing out any cards for any labor organization in 1943?

A. I did not pass them.

Q. You did not pass any out, it is not that you do not remember for sure, you didn't?

A. That is right.

Q. And you did not pass out any cards for any labor organization in 1944, did you?

A. We didn't have anything to do with unions at all during the war.

(Testimony of Charles Spallino.)

Q. Then you did not pass out any cards, is that correct? A. No.

Q. And you didn't have any contact with any union, either A. F. of L. or C.I.O., during the war until you met Mr.—— A. Roberts.

Q. Roberts, is that correct? Now, as a matter of fact, when you went through the plant getting cards signed for Mr. Roberts you told the men that whether they signed the cards [508] or not they could vote on the election for either the A. F. of L. or the C.I.O., didn't you? A. Yes.

Q. And you also told them they could vote for no union if they wanted to, did you tell them that? A. No.

Q. You didn't mention the fact that these people you were contacting for those cards could vote for no union? A. No, I told them——

Mr. Nicoson: Objected to as asked and answered.

Q. (By Mr. Garrett): What did you tell them in that respect? A. I told them——

Mr. Nicoson: Just a minute. I object that as assuming a fact not in evidence. The witness has testified that he told them that they could vote for whichever they wanted to, and he also testified that he did not tell them that they could vote for no union. That is all there is to that.

Mr. Smith: That does not mean that is all the conversation. He is asking for additional conversation.

Mr. Garrett: That is all I want. I don't want

(Testimony of Charles Spallino.)

to go beyond the witness' recollection of the conversations. I will withdraw the question.

Q. (By Mr. Garrett): You knew that in the election that any of those people who signed cards could vote for no union, [509] didn't you?

A. Sure.

Q. They could vote for the company, couldn't they?

A. No, there is only three ways to vote. It is either A.F.of L. Union, non-union, or C.I.O.

Q. The men who signed those cards were aware of that, weren't they?

A. Not until the National Labor Relations Board put the notice up.

Q. You informed them, didn't you, that after that happened they could vote for no union, didn't you?

A. I didn't inform anyone that they could vote for no union.

Q. Well, at that time you were meeting Mr. Roberts. Were you in contact with any representatives of the C.I.O.? Answer that aloud. I want the reporter to get it. A. No.

Q. When did you first meet Mr. Despol?

A. Soon after the election.

Q. When did you first meet his assistant there in the plant? A. At the plant?

Q. Yes.

Mr. Nicoson: I think that assumes the fact that there was an assistant in the plant, so I object to

(Testimony of Charles Spallino.)

that as assuming a fact not in evidence, and improper cross-examination. [510]

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Garrett): When did you first after the time you signed the card in 1942 talk with anyone connected with the C.I.O. about the labor situation in the O'Keefe and Merritt plant?

A. How is that?

Mr. Garrett: Mr. Reporter, read the question.

(The record was read.)

A. Well, the only party I ever talked to concerning the C.I.O. was Louis Ortega, one of the fellows who is working in the plant.

Q. And what did Louis Ortega do?

A. He works at the present time. He is a polisher. All my contacts have been through him.

Q. When did he go to work there?

A. Oh, he has been there several years.

Q. When did you first start to talk to Louis Ortega about the labor situation in the plant?

A. Oh, I would say since after my accident Louis and I always talked about C.I.O.

Q. Was he is a member of the C.I.O.

A. Yes, he has been a member of the C.I.O.

Q. I asked you what kind of work you were doing at that time, and I have forgotten the answer. Can you tell me?

A. At that time, yes, he has been a welder. I don't know [511] exactly what he was going at the time he joined the C.I.O., because he has been in

(Testimony of Charles Spallino.)

the C.I.O. for a long time, he has been connected with it.

Q. Do you know what C.I.O. organization Mr. Ortega belonged to? A. What.

Q. What C.I.O. organization did he belong to, if you know?

A. What C.I.O.? There is only one C.I.O. that I know of.

Q. Is he the man who is unit president for the C.I.O. now at the plant?

A. Yes, the steel workers.

Q. Now, with respect to Mr. Ortega, was he doing any organization for the C.I.O. in the plant?

A. Well, probably so. I didn't see him.

Q. Since when?

A. Well, I guess since we first went to organizing, the first meeting I went to after I went to Collins' office.

Mr. Nicoson: I would like to have the last two questions and answers.

(The record was read.)

Q. (By Mr. Garrett): Did you assist in that work?

Mr. Nicoson: Just a minute, I object to that as assuming a fact not in evidence. He said he probably was, he did not see him, so that certainly is not testimony that Ortega was so engaged. [512]

Mr. Garrett: I will withdraw that.

Trial Examiner Kent: Reframe it.

Q. (By Mr. Garrett): State whether or not

(Testimony of Charles Spallino.)

you know whether Mr. Ortega was organizing for the C.I.O. in the plant. Yes or no.

A. Whether he was?

Q. Yes, do you know?

Mr. Tyre: I will object to that unless a particular time is indicated, your Honor.

Mr. Garrett: Well, let's see.

Trial Examiner Kent: He may answer if he can.

Q. (By Mr. Garrett): In 1942 was Louis Ortega organizing for the C.I.O. in the plant?

A. Yes.

Q. So he did organizing before you signed the C.I.O. application card? A. What?

Q. Was he doing that kind *or* organizing there at the time you signed the C.I.O. application card?

A. Yes.

Q. And was he doing it after you signed the C.I.O. application card?

A. Well, I suppose he has been doing it all the time.

Mr. Nicoson: I object to what he supposed, and I move to strike the answer as not being properly responsive. [513]

Trial Examiner Kent: I suppose the counsel interrogating is the only one who can make that motion.

Mr. Nicoson: The record will show that I object to the supposition of the witness. They are his own conclusions, do not form evidence, and they are not responsive to the questions.

Trial Examiner Kent: Well, that probably is

(Testimony of Charles Spallino.)

true. I think that goes to the weight of the testimony probably more than anything else. The record may remain.

Q. (By Mr. Garrett): Now, in Ortega's organization and since you signed the C.I.O. card, have you assisted him? A. After the election, yes.

Q. Now, between the time when you signed the card and the election, what if anything did you do to assist Louis Ortega in organizing for the C.I.O. in the O'Keefe and Merritt plant?

A. After the election?

Q. No, I am addressing that question to the time between the time you first signed the C.I.O. card and the time of the election.

Mr. Nicoson: I submit that that is not what the witness testified to, and I object to it on the ground it assumes a fact not in evidence. The witness testified that he helped him after the election. I don't think he has testified that he ever helped him before.

Mr. Garrett: That is right, so he says, and that is just what I am asking him.

Mr. Nicoson: I object to the form of the question.

Trial Examiner Kent: You may answer.

A. I was off for about two and a half to three months, I don't know whether it was around that time in there, after I had signed this card I took a leave of absence, and I was away for about two and a half or three months.

Mr. Nicoson: You see, your Honor, the trouble with these very, very broad questions is that trying

(Testimony of Charles Spallino.)

to put it down to any time, because the witness is in an unfair position to even fairly answer the question put to him by counsel, assuming that he did do anything.

Trial Examiner Kent: I know. I wonder just how far I should go in restricting counsel, though, in this cross-examination. If you don't understand the question, don't hesitate to say so. Ask counsel his inquiry rather than take a long shot and guess what the question means.

Q. (By Mr. Garrett): After you came back from your leave, from that time on, what if anything did you do to assist Ortega in organizing for the C.I.O. in the plant?

A. Well, sir, there was a lot of talk at lunch time wherever I ate my lunch, when there was any union talk or anything like that, I would state that the C.I.O. was more for the working people than the A. F. of L. We had a lot of talks [515] like that day in and day out, and I always preferred the C.I.O. to the A. F. of L.

Mr. Garrett: May I have that answer read, please.

(The record was read.)

Mr. Garrett: I notice we have reached the hour of 4:30.

Trial Examiner Kent. Yes. I understand that to-day we are going to recess at 4:30 and be adjourned until 9:30 Monday morning. I would ask that counsel get here promptly at 9:30.

(Whereupon, at 4:30 o'clock p.m., March 15, 1946, the hearing in the above-entitled matter was adjourned until 9:30 o'clock a.m., Monday, March 18, 1946.) [516]

Monday, March 18, 1946

9:45 o'Clock A.M.

Trial Examiner Kent: The record might show Mr. Collins, Mr. Reed and Mr. Smith are not here. Since Mr. Garrett is continuing with his cross-examination of Mr. Spallino, I think we might go ahead at this time. The other counsel can pick up the examination in the transcript.

CHARLES SPALLINO,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Garrett:

Q. Do you recall, Mr. Spallino, that at the close of the hearing Friday you were telling me that during the time in the latter part of 1945 that they were having the agitation about unions at the plant, that you used to make it a point at lunch time and whenever you talked to the other men to tell them you thought the C.I.O. was the better union. Do you recall that? A. Yes.

Mr. Tyre: I object to that. It assumes a fact not in evidence. He testified he had a conversation with Mr. Ortega.

(Testimony of Charles Spallino.)

Trial Examiner Kent: That seems to me to be my recollection.

Mr. Garrett: That is not the record, however.

Trial Examiner Kent: All right. What does the record [521] show?

Mr. Garrett: As a matter of fact, since Mr. Tyre misstated the record I will read the witness' last answer on page 515 of the transcript, which is:

"Well, sir, there was a lot of talk at lunch time wherever I ate my lunch, when there was any union talk or anything like that, I would state that the C.I.O. was more for the working people than the A. F. of L. We had a lot of talks like that day in and day out, and I always preferred the C.I.O. to the A. F. of L.

"Mr. Garrett: May I have that answer read, please?"

At my request the answer was read. Then the adjournment.

Q. (By Mr. Garrett): Now, Mr. Spallino, when you first talked to Collins—

Mr. Garrett: All right. Mr. Tyre seems to question whether I have read accurately from the record. I will ask for a recess so that he can refer to the record. If he will read from the same record I believe the reporter will record the exact words.

Mr. Tyre: I am not questioning what you read, Mr. Garrett.

Mr. Garrett: The last answer.

Mr. Tyre: The only thing I am requesting is that I see the transcript. I only want to see where you read. [522]

(Testimony of Charles Spallino.)

Mr. Garrett: Have you refreshed your recollection from the record now, Mr. Tyre?

Mr. Tyre: There was some question as to whether or not he was talking about his conversation with Ortega. I think you will find in a question or two before that you were then asking about the conversations with Ortega.

Mr. Garrett: I will stand on the record.

Q. (By Mr. Garrett): When you first had those conversations with Collins, and O'Keefe, just prior to the time you took the cards from Roberts to get signed, you knew that the O'Keefe & Merritt Company was on the A. F. of L. unfair list, did you not?

A. I did.

Q. You had known as a matter of fact that it was on the unfair list since the strike in 1937, is that right?

A. That is right.

Q. How did you know that?

A. Well, by hearsay.

Q. Hearsay, people around the plant who were interested in the matter told you from time to time the company was still on the A. F. of L. unfair list, is that right?

Mr. Nicoson: I will object to that question unless he brings out who told him.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Who did tell you? [523]

A. That they were on the unfair list?

Q. That is right.

A. Well, seeing the union activities outside, picket lines and all that, the only——

(Testimony of Charles Spallino.)

Q. As a matter of fact, you saw the A.F. of L. unfair list from time to time and saw the O'Keefe and Merritt Company was on there, did you not?

A. Well, that is just hearsay.

Q. You haven't any doubt in your mind at this time, have you, that the O'Keefe and Merritt Company was on the A. F. of L. unfair list from the time of the strike in 1937 up to the time of the election in 1945?

Mr. Nicoson: Objected to as immaterial. It is a question of fact whether they were on the unfair list. Whether he had any doubts about it or not is not evidence.

Mr. Tyre: His state of mind today is not material to the issues.

Trial Examiner Kent: I think we might save time. The answer may be taken.

Q. (By Mr. Garrett): Do you remember the question, Mr. Spallino? A. Not truly.

Trial Examiner Kent: Read the question.

Q. (By Mr. Garrett): You had no reason to doubt that the O'Keefe and Merritt Company was actually on the A. F. of L. [524] unfair list during all the time between the strike in 1937 and the election in 1945, did you?

Mr. Nicoson: Same objection.

Trial Examiner Kent: The answer may be taken.

A. No, I didn't have any doubt.

Q. (By Mr. Garrett): That is right. And as a matter of fact, after the election, when Mr. O'Keefe talked to you about the difficulty in getting building

(Testimony of Charles Spallino.)

contractors to use the O'Keefe and Merritt product, he told you at that time that they were still on the A. F. of L. unfair list, didn't he?

A. I don't understand that.

Q. Well, at the time he talked to you about the difficulty, remember you had this conversation with O'Keefe when you went up there and talked to him about whether or not the Five and Over Club was going to retain its benefits after the election; do you recall that?

A. Yes.

Q. And do you recollect his telling you that he had had a conversation with one building contractor and his daughter had had a conversation with another, and it was no good, the A. F. of L. building contractors would not set the O'Keefe and Merritt products, do you recall that?

A. That was a matter of fact, that the building contractors were under the A. F. of L., yes.

Q. That is right, and do you remember he told you that he [525] could not get his products set on that account, is that right?

A. Yes.

Q. And that the reason the A. F. of L. building contractors would not set the O'Keefe and Merritt products was because the O'Keefe and Merritt Company was still on the A. F. of L. unfair list. That was correct, wasn't it?

A. That is right.

Q. And as a matter of fact the O'Keefe and Merritt Company is still on the A. F. of L. unfair list, is it not?

A. I don't know.

Q. Do you have any reason to believe it is not?

(Testimony of Charles Spallino.)

Mr. Nicoson: I object to that, calls for the conclusion of the witness, not evidence, immaterial.

Mr. Tyre: I join in that objection.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Now, as a matter of fact, after V-J Day you knew the company would have to go back to making its peacetime line, didn't you?

A. That is right.

Q. It reconverted very fast, isn't that right?

A. Well——

Q. They stopped their war activities and their war orders very quickly after V-J Day, did they not?

A. Well, it took time, yes.

Q. How long? [526]

A. Well, they just now started production.

Q. But you knew soon after V-J Day, did you not, that the company was going to have to go back to its peacetime line?

A. Yes.

Q. That was stoves and refrigeration, is that right?

A. I knew they were not going to build any refrigerators. As far as stoves are concerned, yes.

Q. And large commercial installations, is that right?

A. Yes.

Q. You knew, did you not, Mr. Spallino, that since the strike in 1937 the A. F. of L. had become very much stronger in the construction industry in this area than it had been at the time of the strike in 1937?

Mr. Tyre: I am going to object to that question.

Trial Examiner Kent: I think it clearly would

(Testimony of Charles Spallino.)

call for the conclusion of the witness. I wonder if he would have any basis of fact.

Mr. Garrett: I am only asking if he knows.

Mr. Tyre: I further object, besides because calling for a conclusion of the witness, the answer is entirely irrelevant and immaterial to the issues in this case. I think this entire line is proceeding along immaterial lines at this time.

Mr. Garrett: I think it is immaterial what Mr. Tyre thinks, and I don't think that should be considered.

Trial Examiner Kent: What was the question, Mr. Reporter? [527]

(Question read.)

Trial Examiner Kent: He may answer.

The Witness: I wouldn't have no way of knowing because I wasn't interested in union activities. I didn't know how they functioned. I never been a union man in my life.

Q. (By Mr. Garrett): When Mr. O'Keefe, after the election, told you that the A. F. of L. building contractors wouldn't accept the O'Keefe and Merritt products, you understood what he meant by that?

A. I think I understand English. He was speaking English to me. I understood what he said. I repeated what he said.

Q. You knew that was very important, did you not, because at that time——

A. I couldn't be sure it was important, because I don't know how things operate.

(Testimony of Charles Spallino.)

Q. I see. You didn't have any idea at that time it was very serious, the A. F. of L. wouldn't accept the O'Keefe and Merritt Company because all the building contracts were A. F. L.

Mr. Nicoson: Objected to as being immaterial, as to whether he had any ideas about it or not. I submit this whole line of examination is immaterial and irrelevant.

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): As a matter of fact, when you first had your first conversation with Mr. O'Keefe and Mr. Collins, [528] before you took the cards from Mr. Roberts, you believed that the Five and Over Club was all the employees' organization that was needed in the O'Keefe and Merritt plant; did you not? A. Will you repeat that?

Mr. Garrett: The reporter will read the question.

(The question was read.)

The Witness: No.

Q. (By Mr. Garrett): When did you first come to the conclusion more was needed besides the Five and Over Club?

A. When I first started learning the different parties that took office and the politics in it, that it was a tool; the Five and Over was a tool.

Q. I see. When did you come to the conclusion that the Five and Over Club had become a tool?

A. Well, that was after this last election especially.

Q. All right. Now, prior to the election, however,

(Testimony of Charles Spallino.)

did you feel it was to the interest of the Five and Over Club and its members to help the company to prosper, the O'Keefe and Merritt Company to prosper, so the Five and Over Club and its members could share in the benefits? A. That is right.

Q. That was the policy of the club from its inception; was it not?

A. My answer would be kind of long.

Q. Go ahead. [529]

A. Prior to this last election in 1945 Collins' brother-in-law held office as the Five and Over president.

Q. Let me interrupt just for a moment, to ask for his name.

A. Bill Cole is his name.

Q. Is that spelled C-o-l-e?

A. That is right. Now, he was president; he is a foreman. He had a lot of privileges which I didn't have. I will state some instances that were different from what I had to do.

In my time as president I had to pay the—the club paid for all the expenses that was due to the club. During the time that Cole held office we had one case there where we bought turkeys and the company furnished \$900.00 toward those turkeys, which I didn't get the assistance from the company.

Q. They didn't do that the year you were president?

A. No, because they wouldn't O.K. anything like that. You see this button I wear here (indicating)? Or the 20-year ring, we called it. Those bills were

(Testimony of Charles Spallino.)

turned in to the company and the company paid for those rings during his time.

When I took office I had 5 or 6 rings to offer 20-year men. The bill was turned in to the company and it was turned down. The club paid for those rings. [530]

That is the difference. It all depends on who runs the club and how they run it, if they run it in the favor of the company or in favor of the men.

So I paid for my rings. It was turned down. And, in fact, when I bought these last turkeys I was warned if we didn't have enough money to not take a chance to buy turkeys, because the company got stuck on the last bunch.

Mr. Collins: I object to that and move the answer be stricken on the ground it doesn't tend to prove or disprove anything in the case. It is the rankest kind of conclusion of this witness, that the company bought turkeys or anything else, because one particular man was president of the club. There could have been a thousand and one other reasons. I could think of two or three others.

The Witness: I could think of one.

Mr. Collins: Just a minute. The first and most pertinent would be the violation of the Wage Stabilization Act—would have been a violation of the wage fees to have added anything to the wage of these employees, without the permission of the government. It was during the time of the war. There are a thousand and one reasons why that would not have been the case.

(Testimony of Charles Spallino.)

Upon the grounds I have heretofore stated, it is a conclusion of the witness, I move it be stricken.

Mr. Tyre: I submit, your Honor, that if counsel for the [531] company has any objection to the question it should be taken before the answer is given, rather than waiting until he hears what it is, and object afterwards.

Trial Examiner Kent: I can see where the testimony may or may not be relevant. The issues here are so intermixed that for some purposes I can see where this testimony might be relevant. I will let the record remain.

Mr. Garrett: Has your Honor ruled?

Trial Examiner Kent: Yes. The answer may remain.

Q. (By Mr. Garrett): It will be your testimony then, Mr. Spallino, during the time Mr. Cole was president of the Five and Over Club it was not an independent organization, but after you became president it was independent; is that right?

Mr. Tyre: I object to that as calling for a conclusion.

The Witness: I don't see——

Mr. Tyre: Just a minute.

Trial Examiner Kent: The answer may be taken.

Q. (By Mr. Garrett): Do you want that question read?

A. Yes. Read that.

(The question was read.)

(Testimony of Charles Spallino.)

The Witness: Well, I don't understand independent or not independent. It has been the same, as far as I have known it. In fact, that was during the war when these turkeys were given out.

Q. (By Mr. Garrett): As a matter of fact, however, after you [532] became president the company ceased to give the club the same co-operation it gave before; is that correct?

A. It has happened before. Whenever I took over, I didn't get any assistance. I worked everything through myself.

Q. In other words, whenever you were president and any of the times you were president of the organization, it was operated without the company's assistance; is that correct. A. That is right.

Q. That is, independent; is that correct?

A. That is right.

Q. All right. Now——

A. What do you mean "independent"? That is what it is supposed to be.

Q. You made it above what it was supposed to be? A. That is right.

Q. You were a man who is honest in his own convictions; is that correct?

A. Yes. We didn't ask for any assistance.

Q. You felt the club ought to be operated as an organization for the employees?

A. That is the way it is supposed to be.

Q. Feeling the way you do, you wouldn't be the kind of man to operate it any other way?

A. No.

(Testimony of Charles Spallino.)

Q. You would be honest and be a true man?

A. Yes.

Q. You would preserve the club's independence?

A. This particular club I was talking about, the rings, it was told me the company was taking care of them—weren't taking care of it during Cole's office. When I took office the bill was turned in as usual and it was turned back to me and I was told the club was to pay for it, and that was that. I had to pay for it.

Q. As a matter of fact, the company had an interest in arranging things so it could get its products accepted in the construction industry? You knew that?

A. You talk a little too fast for me.

(The question was read.)

The Witness: I don't understand.

Q. (By Mr. Garrett): You know there was no good in making these stoves and equipment if you couldn't sell them? You knew that; didn't you?

A. I also knew—I didn't think it made any difference if you were C.I.O. or A.F.L. products, as long as it was organized labor selling the goods it would still be sold.

Q. You knew the A.F.L. wouldn't handle the products made in a C.I.O. shop; didn't you?

Mr. Tyre: I object.

Trial Examiner Kent: I will sustain the objection. I think we are getting into an argument with the witness. I [534] question just how much the

(Testimony of Charles Spallino.)

witness' conclusions have as weight on these things.

Mr. Garrett: All right. I am trying to find out what his purpose was, if your Honor please.

Q. (By Mr. Garrett): Now, when Mr. O'Keefe, after the election, told you that he couldn't get the O'Keefe and Merritt products accepted in the construction industry, was this a surprise to you?

A. That he could sell his materials?

Q. That is right.

A. See, I would have to get back into another little story there. Prior to the election——

Q. Wait a minute.

Trial Examiner Kent: Read the question.

(The question was read.)

The Witness: Well, not knowing anything about union wages of working, I wouldn't say anything to that, because I wouldn't know what the union—I never been a union man. I don't know what they do or how the laws in this country are. I thought we still had freedom in this country, we could still sell our goods wherever we want to; that is the way I always believed.

Mr. Garrett: May I have that last answer read by the reporter, please.

(The answer was read.) [535]

Q. (By Mr. Garrett): You know what a boycott is, don't you?

Trial Examiner Kent: I wonder if you are not going to try to drag out a legal conclusion.

The Witness: I think that would be a real argument.

(Testimony of Charles Spallino.)

Mr. Garrett: I will withdraw the question.

Q. (By Mr. Garrett): You knew the company was on the unfair list, didn't you?

A. Well, as far as I knew they were years back. I don't know whether they still are or what.

Q. As a matter of fact, you knew just before the election that the company was still on the unfair list, because Mr. O'Keefe told you, "We have to get off that unfair list," isn't that the fact?

A. Before the election we were off the list because we had a charter from the A. F. of L., and we were off that list before the election.

Q. What did you think before the election when he told you, as you testified, "We have to get off the A. F. of L. unfair list?" What did you think he meant?

Mr. Collins: On behalf of the company, I will stipulate at this time that we are not off the unfair list yet, if that will shorten the proceedings any.

Q. (By Mr. Garrett): Will you answer that question?

A. What does it mean to be off the unfair list?

Q. What did you think O'Keefe meant when he told you just [536] before the election, "We have got to get off the A. F. of L. unfair list?"

Mr. Nicoson: I will object to that as calling for a conclusion of the witness, does not tend to prove or disprove any issue in this cause. The facts speak for themselves and what this witness thought about them is immaterial.

Mr. Garrett: This man's motives and his state

(Testimony of Charles Spallino.)

of mind are one of the issues in this case, if your Honor please.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, we were on the unfair list. I know what the unfair list means, yes.

Q. (By Mr. Garrett): You knew what it meant? A. Yes.

Q. And you know it means that certain people won't patronize a firm which is on the unfair list. You knew that, didn't you? A. That is right.

Q. You knew that all the time, didn't you?

A. I suppose I did.

Q. And you knew it also meant the A. F. of L. workers would not work on the product that came from the firm on the unfair list, you knew that, too, didn't you?

A. Well, that could work both ways.

Mr. Nicoson: Just a minute. I object to that because I think that is an impossible question to answer. I don't know whether it is a fact that they will refuse to do it or not. [537] I think it can possibly be proven it is not a fact, that they have worked on products of that kind.

Trial Examiner Kent: Well, we are delving into realms of speculation to some extent.

Mr. Garrett: All right.

Q. (By Mr. Garrett): After the first time, Mr. Spallino, that you talked to Mr. Collins in his office about the A. F. of L. Unions, after that time you were trying to help the company get off the A. F. of L. unfair list, weren't you?

(Testimony of Charles Spallino.)

A. I was not trying to get—what is that, I was trying to get the A. F. of L. off the unfair list, you say?

Trial Examiner Kent: Read the question.

Q. (By Mr. Garrett): You were trying to help the company get off the unfair list, weren't you?

A. I was trying, I was working with a group of men here that were telling me a lot of things, and I was trying to work with them, but I was not working with them.

Q. Collins told you and Levascos at that first meeting in his office, you testified about——

A. That was a plot.

Q. Well, I don't care whether it was a plot or not. Didn't he tell you that the company had to get off the A. F. of L. unfair list?

A. Well, that is the story.

Q. That was the story, and you believed it at the time, didn't you? [538]

A. Not in my heart.

Q. You believed it or you would not have done the things you did.

Mr. Tyre: I will object to that. That is argumentative, your Honor.

Trial Examiner Kent: I think it is. I think I will sustain the objection.

Q. (By Mr. Garrett): All right. Now, as a matter of fact, after that first interview in Collins' office where he told you and Levascos that the company had to get off the A. F. of L. unfair list, as an officer of the Five and Over Club you thought

(Testimony of Charles Spallino.)

it would be easier for the company to sell its products if they did get off the A. F. of L. unfair list, didn't you?

A. You make those questions pretty hard for me to explain, that sort of thing.

Q. Why don't you answer it yes or no, and then explain the answer. You are permitted to do that.

Mr. Nicoson: Your Honor, I submit they are not capable of being answered by a simple yes or no. They are very complex questions.

Trial Examiner Kent: No, that is true, I think. You may generally answer briefly. All witnesses are at liberty if they do not think a short and concise answer is a fair [539] and complete answer, are at liberty to enlarge upon their answer and amplify it. I don't mean that you should try to amplify every answer that you give, only in answering a question which you think requires further explanation, you can do it.

The Witness: But, your Honor, the way he is asking me these questions won't explain why the organized plotting was going on and they had the opportunity——

Mr. Collins: Just a moment. I move that be stricken upon the ground it is a conclusion of the witness.

Trial Examiner Kent: It may be stricken. Let's start with the question. Let's hear the question, and if you don't know what it means, you are at liberty to ask counsel to further elucidate and to

(Testimony of Charles Spallino.)

consider the question first, and if you can answer, go ahead and answer it.

The Witness: But, your Honor, what I mean—

Trial Examiner Kent: Wait a minute, now. Consider the question. Read the question to him, Mr. Reporter.

(The question was read.)

The Witness: I thought that any union would in fact, get them off the list. After all, the C.I.O. is just as strong as the A. F. of L. I figured any union would be.

Q. (By Mr. Garrett): But you knew the company could not get off the A. F. of L. unfair list by going C.I.O., didn't you? [540]

Mr. Nicoson: I object to that. The witness has shown no qualification for knowing any such thing. I submit that that would be the most difficult question even for counsel in his position to answer or for anyone in this room more experienced than this witness, to tell what it would take to get this company off the A. F. of L. unfair list. Maybe if we had King Solomon here he might be able to divine the answer, but certainly not we poor mortals.

Trial Examiner Kent: I wonder if we are not trying to raise and solve an issue which is not directly germane to the issues in this complaint by this last inquiry.

Mr. Garrett: I beg your pardon?

Trial Examiner Kent: I say, I wonder if we are not trying to raise and solve an issue which is

(Testimony of Charles Spallino.)

not germane to the issues actually raised in this complaint, by this line of inquiry.

Mr. Collins: I don't think so, your Honor.

Mr. Garrett: You see, as Mr. Collins said the other day, he pointed out that frequently objections are raised by counsel ill advisedly to questions on cross-examination merely because if they can get the officer who has the ordering of the trial to rule narrowly on questions on cross-examination or demand offers of proof merely so that the Examiner will have to state his position before the witness and lose the benefits that cross-examination should have in [541] every hearing, in the unusual power to properly conduct the cross-examination to elucidate the truth, particularly from a reluctant witness. I can tell your Honor why this question is germane, if your Honor holds me on cross-examination to the same strict rules as your Honor might apply on direct, I will have to tell your Honor, but then the witness will know and be forewarned and I believe be able to continue to evade the issue and continue to withhold the truth.

Trial Examiner Kent: To save that, I will ask the witness to step out of the room just a minute, then I will listen to it. You may just step outside the room for a minute.

(The following took place outside the presence of the witness.)

Trial Examiner Kent: You say, Mr. Garrett, objections are sometimes made to get the hearing officer to commit himself on the reason for his rul-

ing. Maybe the hearing officer ought to be a little bit more guarded and not commit himself.

Mr. Garrett: Offers of proof, of course, in court, can be made in this way, out of the hearing of the jury and out of the hearing of the witness, and I think this is the proper way to make it, if it is an important line of questioning that is sought to be shut off, as I think the line of questioning here is. Here is my position, your Honor: Certainly my examination [542] is within the scope of the direct examination. This man was permitted to testify on direct examination by both Mr. Nicoson and Mr. Tyre time and time again as to conversations in which this question of this A. F. of L. unfair list came up. You recall the first time that he became enlisted in the present activity involving the A. F. of L. and the C.I.O., it was under circumstances where at the outset of that interview, which was the beginning of the participation in the present situation, he was informed at the outset we have got to get off that A. F. of L. unfair list. He testified further that from the time of his first participation in this club, in which he was the guiding spirit, throughout the period of time involved in this case, he is attempting honestly to help the company in the belief which so many of these persons in inside organizations erroneously get that if he will help the company to prosper, why, the benefits will be handed on to this inside organization which cooperates so nicely and which spares the company the embarrassments and problems an average employer has with the average union. In that state of mind,

he had every reason to believe, not only as an individual but as a policy maker for this Five and Over Club, in the capacity as an officer of the Five and Over Club, he did practically every act which it is now sought to prove assisted the A. F. of L. There is every reason to believe not only his view, but also [543] the view of the organization that he represented, that the war being over, the immunity of the war time period being removed, the production of the war time product which did not require A. F. of L. assistance in its installation being stopped, the return of the company's production to the pre-war product which it had to install in A. F. of L. construction, that that being the case, it was the legitimate purpose of a man who is in that state of mind and also the legitimate objective of an organization which had the objectives that the Five and Over Club had, to assist the company in getting off the A. F. of L. unfair list so the company could sell its product and so that the witness and his club members could have employment, and employment by a company which was successfully selling its product and could afford to pay good wages and not by a company that was being troubled by a boycott against its product in the A. F. of L. Construction Trades, and naturally, under those circumstances, could not prosper and could not pay its employees, and under such circumstances the employees could not prosper.

Now, he stated earlier in this cross-examination, "I never helped the A. F. of L. in good faith." He

stated earlier in this examination that during the very time he was circulating these cards, and that is what Mr. Tyre did not want to have read on the record, that during that very [544] time he was talking in the plant against the A. F. of L. and for the C.I.O. in the highways and the byways, in the fields, on the beaches, in the streets, the way Churchill put it, over his lunch pail wherever he could possibly get in a lick, he was getting in a lick for the C.I.O. and against the A. F. of L.

Now, if the company is assisting the A. F. of L. Union, two questions are pertinent: One, is the company actually assisting the A. F. of L. Unions through the Five and Over Club, or is the Five and Over Club in and of itself and sui sponte as the result of its policies assisting the A. F. of L. organizations of itself and on its own behalf? That is one question.

The next question is, if the A. F. of L. is being assisted in organization and it is sought to strike down the A. F. of L. contract in this situation by proving it was assisted, is it a fact that the A. F. of L. was assisted, or is it a fact that the A. F. of L. was being betrayed?

Now, the state of mind of this man as to why he did the things he did, we have got to determine what his state of mind is, first, before we ascertain whether the A. F. of L. was assisted at all, and, second, whether the A. F. of L. was assisted by the company in violation of the Act, or by the club and not in violation of the Act. Now, that being the case, who can say that it is not germane to the

issues in [545] this case for me to bring out from this evasive witness whether or not his objective was to violate the Act if he could, as an officer of the club, and help the company violate the Act, or whether he was simply trying to do anything that would effectuate his purpose and the purpose of the club, which is to get the company off the unfair list and betray the only union which could do it? On that side of the question I am asking him what he sought, did he know what the effect of the unfair list was. He said he did. Now, I am asking you, when you did these things, you did them after being told by the company that they had to get off the unfair list, when you did these things, did you do it honestly, believing that it was a good thing for the company to be off the unfair list, or did you do it merely because you wanted to help the A. F. of L., or did you do it merely because the company told you to.

Now, what his belief is and whether or not he as an individual should assist the company off the unfair list and their product, his product off the unfair list, is separate in fact, and his attitude toward that as an officer of the club, that is what I say is material. I think that is the crux that determines what legal affect, if any, this witness' testimony, and all of it, would have.

Mr. Nicoson: I don't think that that statement requires much of an argument. I certainly will concede that if this [546] witness has any improper motives, by which he may attack his credibility, counsel would certainly have a right to inquire into

that. I submit so far he has been unsuccessful.

I think the whole line of questioning is only cluttering the record and is not accomplishing even what he says it is to accomplish.

Third, I think it is unimportant what this witness thinks. I think the important thing is what he did, the impetus that caused him to do what he did and the effect of what he did, so far as the issues of this case are concerned, whether he was prompted by the most impure motives or whether he was prompted by the purest motives doesn't detract from what he actually did in signing up these A. F. of L. people at the instance of the company.

Now, that is our case. I think all of this material is cluttering up the record. It isn't accomplishing a thing here. And while I haven't objected a great deal, I thought, in the interest of time, it might be well to let him pursue it. But I still think the whole line of examination is improper, and if it is pursued further I will make appropriate objections at the appropriate time. That is all I have to say.

Mr. Collins: I think, if your Honor please, the question of whether or not the employees of O'Keefe and Merritt Company or Pioneer Electric Company know whether or not O'Keefe and [547] Merritt was on the unfair list is highly pertinent to the issues in this case and is the real reason why the employees would have assisted the A. F. of L., if they did, rather than to assist the C.I.O. They

saw something to gain if they could help to get the company off the unfair list.

I see an opportunity to impeach the testimony of this witness as properly cross-examining him on the subject of the unfair list. He has made several statements in the record which I think now are being contradicted by the testimony Mr. Garrett has elicited from this witness. I think I have some questions myself. I don't think I need go into them now, until the appropriate objection is raised when I get into the cross-examination. That is the whole gist of it. Why did they join the A. F. of L. instead of the C.I.O.?

Mr. Tyre: I have only a short statement to make in response to Mr. Garrett's lengthy dissertation. First, I agree whole heartedly with Mr. Nicoson. What we are interested in is not the state of mind of Mr. Spallino, but only in what he did and what he did in connection with what the company told him to do or what the company didn't tell him to do or the company told him not to do. That is all we are interested in. [548]

I don't care what his motives were in carrying out the company's instructions. The only things that are material are what were the company's instructions and how were they carried out by this individual.

I have no objection to any cross-examination on what his actions were or how he did or did not carry out the instructions of the company, or what were or were not the instructions of the company. But it is not material to go into the state of mind.

Now, it seems to me that a great deal of this examination is going into the question of whether or not the A. F. of L. had placed the company on the unfair list and what it meant. The only testimony, as I can recall, that was brought out from this witness on direct examination, with respect to the unfair list, is what did Mr. O'Keefe or Mr. Collins tell him about the A. F. of L. placing this company on the unfair list.

The testimony from Mr. Spallino was not brought out for the purpose of showing the truth of the fact that the A. F. of L. had placed the company on the unfair list, but only for the purpose of showing that the company stated that the A. F. of L. was placing the company on the unfair list, and that for that reason the company had to become an A. F. of L. shop and not a C.I.O. shop.

In other words, this testimony of Mr. Spallino was not elicited for the purpose of showing the truth of the [549] statements made by Mr. O'Keefe and Mr. Collins, but only for the purpose of showing they were actually stated. For that reason it is improper to go into Mr. Spallino's testimony on cross-examination to rebut the truth of the statements that were made by the company. Cross-examination can be permitted on this line only for the purpose of showing that Mr. Collins or Mr. O'Keefe or someone else did not actually make that statement.

Mr. Smith: Mr. Trial Examiner, I think I will add my little bit here, also. I think what Counsel Nicoson and Tyre object to is the fact the testimony

is being brought out which they didn't expect and with which they are very disappointed. The state of mind is most material.

Mr. Tyre himself argues that their purpose in asking certain questions is not consistent with the purpose had in mind by Mr. Garrett. The purpose is the state of mind, I submit, and I think I needn't tell you that or elaborate on that.

The fact they may have had the different purpose than Mr. Garrett doesn't bind Mr. Garrett to their purpose. The fact remains they saw fit to bring out the unfair list on direct, thereby opening up to Mr. Garrett, as he sees fit to ask, any and all questions relevant thereto. That is what he is doing.

So far as the Act is concerned, the witness, as I have heard him, has testified that while the company told him [550] certain things, he has time and time again mentioned things, such as scheme, plot, "I didn't do that. In my own heart I felt differently."

It is most material whether unfair denotes—partially is a state of mind, what went on and who told this witness is not unfair. That goes into what was in the mind, and in the mind of the witness, and this proceeding will resolve itself in favor of the company and the unions concerned who have been charged with unfair tactics.

I submit the only way to find out what actually was the state of mind which is most pertinent to a subjective subject, such as unfair, it is nothing

you can put your finger on by way of saying, "He went east or west or so forth."

Therefore, it is unfair. It is not anything he can actually do, but what was done in the light of certain circumstances. And those circumstances are, in part, determined by what this man had in mind.

If, as Mr. Collins pointed out, he did these things to preserve his own job and to preserve the jobs of his fellow associates and working men, the company can't be charged with any unfair practices. That is why it is most relevant for Mr. Garrett to ascertain whether or not this man had the purposes in mind which Mr. Garrett is trying to find out, or some other purposes.

I submit state of mind, while different from the purposes [551] had in mind by Mr. Tyre on direct examination, does not agree with his. The fact that it doesn't concur and coincide with their purposes certainly doesn't make cross-examination objectionable.

Trial Examiner Kent: Well, I do think that the inquiry is not particularly germane to the issues.

On the other hand, there is a question of credibility involved, and I think the cross-examiner, from that standpoint, is entitled to inquire further.

However, I would request the inquiry along this line be relatively brief.

(The witness returned to the hearing room and resumed the stand.)

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did you have any further discussion when you and Mr. Levascos talked to Mr. Collins about what he meant in that interview when he said the company had to get off the A. F. of L. unfair list?

A. I didn't get it straight.

Trial Examiner Kent: Read the question.

(The question was read.)

The Witness: I don't remember the discussion.

Q. (By Mr. Garrett): Was there anything more said on that subject after Collins said that the company had to get off the A. F. L. unfair list by either you or Collins or Levascos?

A. Well, he did explain the way to go around it, to get [552] certain guys to sign up in the A. F. L. In fact, I think Mr. Roberts if he had been there, he would have been disappointed, because they were even going to just get enough members just to get off the list, and then to keep the shop non-union; just a limited amount of men in the union.

Q. That is true. Now, was that brought out at that conversation? Who said that?

A. Mr. Cecil Collins.

Q. All right. Now, will you tell me exactly what he said along those lines?

A. Exactly what he said?

Q. Approximately, to the best of your recollection.

A. Well, exactly what I can remember is that, "You and Johnnie sign up these Five and Over

(Testimony of Charles Spallino.)

members, and get the ones that just became members and pick some of the new men that are out there that are easily led. And between you and Johnnie, why, get yourself appointed at the top so that—you can easily lead them.”

Q. That is right. And the company would stay non-union; is that correct?

A. Well, just be enough union there to get off the list, yes.

Q. In other words, you could go out and get these cards signed, but you could work against the A. F. L. in the election so the A. F. L. would lose the election; is that correct? [553]

Mr. Tyre: I am going to object unless the question is clarified. If he is asking whether or not that was a statement made by Mr. Collins, then it can be answered. If he is merely arguing with the witness, I submit, your Honor, it is objectionable.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Garrett): Did Mr. Collins say something to that effect, that you should go out and get the cards signed up and get the A. F. L. started, but that you could then fix it up so the A. F. L. would lose the election?

A. Collins didn't make that kind of a statement, that they lose no election. They didn't *take* about the election. They wasn't worried about the election.

Q. But you weren't really attempting to assist the American Federation of Labor, but only to

(Testimony of Charles Spallino.)

assist the company, is that correct, to get off the unfair list?

Mr. Tyre: I object to that. It calls for a conclusion of this witness. It is not material to the issues.

The Witness: We were to assist Mr. Roberts—

Mr. Tyre: Just a minute.

Trial Examiner: I will sustain the objection. I think the conclusion must be made by something else.

Q. (By Mr. Garrett): As a matter of fact, you agreed with Collins in that interview that it was a good thing to get the company off the unfair list; didn't you? [544]

A. Well, giving him those 50 signatures there would have got us off the unfair list, yes.

Q. You did that to get the company off the unfair list; didn't you?

A. I did that for that? Like I stated before, that I was working for the C.I.O. In fact, they were organized, so I organized myself with Mr. Ortega. I think I made that statement before.

Q. By the way, when you were circulating these cards did you have any conversation with Mr. Louie Ortega? A. Yes.

Q. Did you tell him what you were doing?

A. I told him what I had to do, what I was told to do.

Q. Did you have him report that to the C.I.O.?

A. Well, if he did report it, that is what was his job to do.

(Testimony of Charles Spallino.)

Q. You know that was his job, to report what you told him to the C.I.O.; is that correct?

A. That is right.

Q. You told him everything you did?

A. Yes.

Q. So as to keep him informed; is that correct?

A. That is right.

Q. And you didn't let any time elapse, but whenever a move was made you told him with reasonable promptness? [555]

A. Right now.

Q. Did you not?

A. The quicker the better.

Q. I beg your pardon?

A. The sooner the better.

Q. By the way, after you signed that application card in the C.I.O., when you were suffering from your industrial injury, how long was it after that that you attended a C.I.O. meeting?

A. After my accident?

Q. That is right.

A. That Sunday falls on there. That is the only meeting I ever went to around that time.

Q. It was on a Sunday; was it? A. Yes.

Q. Now, it was after you signed the C.I.O. application card?

A. That is where I got on the carpet, after that.

Q. Where did you attend that C.I.O. meeting?

A. On Slauson Avenue.

Q. At C.I.O. headquarters?

A. That is right.

(Testimony of Charles Spallino.)

Q. Did you go down there and was that a meeting of members of the O'Keefe and Merritt?

A. Yes.

Q. A special meeting for members of your shop?

A. Yes.

Q. Who were you addressed by at that time representing the C.I.O.?

Mr. Nicoson: Objected to as being immaterial.

Trial Examiner Kent: I will sustain the objection.

Mr. Nicoson: Also it assumes a fact not in evidence.

Mr. Garrett: I will withdraw the question.

Q. (By Mr. Garrett): Were the Slauson headquarters of the C.I.O. addressed by anyone representing the C.I.O.?

A. Yes, there was.

Q. The speakers there were representatives of the C.I.O.; were they?

A. That is right.

Q. And the persons in attendance were O'Keefe and Merritt employees; is that right?

A. That is right.

Q. What hall was the meeting held in? Do you recall whether it was downstairs or upstairs?

A. It was downstairs.

Q. How many were present?

A. I would guess roughly around 45, 50, I guess somewhere around in that neighborhood.

Q. This was just before you were, as you say, called on the carpet at the time you and your brother talked to Collins; is that correct? [557]

A. That is right.

(Testimony of Charles Spallino.)

Q. Who on behalf of the C.I.O. represented the C.I.O. at the meeting at the C.I.O. hall?

Mr. Nicoson: That is objected to as immaterial.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Garrett): Who spoke to the C.I.O. there?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Was Louie Ortega there? A. He was there.

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained. The answer may be stricken.

Q. (By Mr. Garrett): Was Mr. Despol there?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Did you make any arrangement at that meeting to assist the C.I.O. against the A.F.L. with anyone representing the C.I.O.?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: Did I make what?

(The question was read.) [558]

The Witness: No, I didn't take any part, that I remember, at that time. There were too many guys we had to watch out for, because the company had their men out there. They weren't all C.I.O.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): I am not asking you what you did as a result of that meeting, but did you make any arrangements there as to what you were to do?

Mr. Nicoson: Objected to as having been asked and answered.

Q. (By Mr. Garrett): Answer that yes or no.

Mr. Nicoson: Objected to as having been asked and answered. He said he didn't take any part.

Mr. Garrett: He didn't say——

Trial Examiner Kent: He may answer.

The Witness: I did not take any part, I said before.

Q. (By Mr. Garrett): I am not asking whether you took any part in any drive or not. I am asking you whether you made any arrangements to do anything when you attended that meeting at the C.I.O. hall.

A. No, I didn't make any arrangements.

Q. Did you make any agreement with anybody as to what position you were to take toward the C.I.O. in the O'Keefe and Merritt plant?

A. Yes.

Mr. Nicoson: Objected to as calling for a legal conclusion [559] of the witness; beyond his qualifications.

Trial Examiner Kent: Objection sustained.

By the way, this happened about two years ago, according to your earlier testimony, I believe, this meeting you attended?

The Witness: Yes.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did you speak at that meeting?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Did you report back to anyone in the O'Keefe and Merritt Company what happened at the C.I.O. meeting?

Mr. Nicoson: Objected to as immaterial.

Trial Examiner Kent: The answer may be taken.

The Witness: I didn't have to. I was called right away.

Q. (By Mr. Garrett): Do you recall, did you make your report?

A. I didn't have anything to report.

Q. You wouldn't tell the company anything about what happened at the C.I.O. meeting?

A. I didn't report to no company. I was called on the carpet, I said.

Q. Were you asked to report what happened at the C.I.O. meeting?

A. I was asked, yes, but I didn't have to answer it. [560]

Q. Did you refuse to?

A. Sure, I refused to.

Q. You remained loyal to the promise you made at that meeting that you wouldn't run back and tell the company about what happened; is that right?

Mr. Nicoson: Objected to as immaterial. It assumes a fact not in evidence. It is improper cross-examination.

(Testimony of Charles Spallino.)

Trial Examiner Kent: Read that question.

(The question was read.)

Trial Examiner Kent: You may answer.

The Witness: I didn't have to report because the company had their reporters there.

Q. (By Mr. Garrett): Who were they?

Mr. Collins: I move that be stricken on the ground it is a conclusion of the witness.

Mr. Garrett: I think he can answer, if he knows.

Mr. Collins: I will withdraw the objection.

Trial Examiner Kent: The record may remain. I think you can clear that up by further inquiry.

Q. (By Mr. Garrett): Who were the company's reporters?

A. I can't recall his name. He was at the present—he has been fired for being drunk on the job and having a wreck. I can't recall his name at this present time. Maybe he (indicating) can refresh my mind on his name. He used to be in the service department. [561]

Q. All right. This man was a service department man who has since been fired for getting drunk and having a wreck; is that correct? I presume the wreck involved one of the vehicles.

A. One of the company trucks.

Q. That is right. So you can remember that much about him. Did the company have other reporters there?

A. Well, I could say others, but I wouldn't want to mention their names.

(Testimony of Charles Spallino.)

Q. Well, did they or didn't they? I am not asking you for their names.

A. Because they seemed to, you know, when you do a thing for the company sometimes you get jobs, you know, with——

Q. Nobody asked you for their names. I am asking you—you have identified one man as a reporter for the company at this meeting. Were there any others? Answer that yes or no.

A. They seemed to know everything.

Q. Answer yes or no.

A. Yes, there were other reporters.

Q. Now, let's get down to some facts. How did you know this first man, the service department man, was a reporter for the company at the C.I.O. meeting?

A. Well, he has been overheard by others, and the privileges that he had.

Q. You draw the conclusion that he was a company spy from [562] the fact he had privileges?

A. From other people. They say, "There is your reporter right there."

Q. There was some question as to whether or not that was a fact?

A. Because they never signed up with the C.I.O. They came there with the intention to find out what was going on and who was there and who spoke.

Q. You signed with the C.I.O.; didn't you?

A. Yes.

Q. But this man didn't, and so you think he was a reporter; is that correct?

(Testimony of Charles Spallino.)

A. There is a lot connected to what I thought.

Q. Did he ever tell you he was a company reporter there?

A. You think he would tell me that?

Q. Did he ever tell you?

A. Would you tell me that?

Q. Answer that yes or no.

A. No, he didn't tell me he was a reporter.

Q. Who told you he was?

A. Fellows I worked with.

Q. Who?

Mr. Tyre: I object to that, if your Honor please. I don't think this witness has to divulge the names of the persons at the plant who may be active in the C.I.O. [563]

Mr. Collins: I submit that is a perfectly proper question. This witness stated——

Trial Examiner Kent: I think there may be a treading on dangerous ground. I will sustain the objection.

Q. (By Mr. Garrett): Do you have any other reason to think this service department man was a company reporter besides what you have already told us?

A. Well, he happens to work with the brother-in-law to the lawyer. It is all a clique in that department.

Q. All right. Do you have any other reason to think he was a company reporter in that meeting? I want you to tell us all the reasons.

(Testimony of Charles Spallino.)

A. Because a man that has been drunk three or four times and still be hired and keep his job, he must be doing something other than his work.

Q. Any other reasons?

A. I have had the same offers.

Q. Any other reasons why you think this man was a company reporter?

A. How many reasons do I have to tell you? I am giving it to you plain.

Q. All right. Do you have any more reasons?

The Witness: Your Honor, he is driving on one point. I don't know what it is.

Trial Examiner Kent: Answer it. What is the difference? [564] Answer it yes or no.

The Witness: There may be a lot of reasons. Yes, there are a lot of reasons.

Q. (By Mr. Garrett): You have stated, as far as you recall now, all the reasons you thought the service man was a company reporter at the C.I.O. meeting?

A. I think I have said enough reasons that he was a reporter.

Q. You think you have said enough. But do you have any others?

A. Is there another question to that same order there?

Q. There hasn't been any objection to that question, Mr. Spallino. You are safe in answering it, if you can.

Do you have any other reasons which you have not heretofore stated why you think this service

(Testimony of Charles Spallino.)

man you have been talking about was a company reporter at the C.I.O. meeting?

A. I can't have any more reasons.

Q. Now, with respect to these other persons you suspect of being company reporters there. What is the reason that you think they were company reporters at that meeting? Tell us what the situation is.

A. The situation is that is you are playing ball, as Collins called it, that you get places. They get places. They haven't worked there as long as I have. I have worked and worked. It doesn't mean a thing. It ain't the work you [565] do, but who you do work with.

Mr. Collins: Mr. Trial Examiner, I wish to object to the conclusions of this witness.

Mr. Garrett: I move to strike the answer as not responsive.

Mr. Collins: I move all this testimony regarding company informants at the C.I.O. meeting be stricken from the record unless this witness is going to back it up with testimony of some witnesses that told him that. [566]

There is no opportunity on my part to cross-examine the witness as to who these people are and whether or not they are company employees and were company spies at the meeting, unless I have sufficient information to go on. This is the rankest kind of conclusion, conjecture, surmise. I move it all be stricken.

Mr. Tyre: I submit that the question "Why did

(Testimony of Charles Spallino.)

you believe these people were company reporters” called for the conclusion of this witness. Counsel for the company didn’t object to the question until after the answer was given and he felt that it might hurt his case in some way.

Now, if counsel for the union, Mr. Garrett, wants to withdraw his entire line, I will have no objection. As long as he continues along that line and the objection is not made to the question when asked, I don’t think it is proper for counsel at this time to move the answer be stricken after the answer is in.

Mr. Garrett: I don’t intend to withdraw this line of questioning. If this company was so ill advised as to send spies to any union meeting, I want to bring out the facts.

Mr. Tyre: I have no objection——

Mr. Garrett: This man is evading my questions.

Mr. Collins: Mr. Trial Examiner, the counsel for the C.I.O. has, on a number of occasions, said we should object to things before the answer is in. I submit that is perfectly [567] foolish. I don’t know what kind of an answer is going to be given before the answer is given. I can’t object to anything until I hear the answer.

Trial Examiner Kent: That, of course, is true in reference to some questions and not in reference to others. I think we are wasting a good deal of time on it. I can’t concede the evidence would have a great deal of weight, unless the witness is willing

(Testimony of Charles Spallino.)

to testify to names of other witnesses who would tend to support his statement. There is one thing in there and that is the fact he testified he was called shortly thereafter, after this meeting, that would lead him to believe that the company, in some way, knew he attended the C.I.O. meeting.

Now, whether it was because they had spies placed in the meeting or because somebody else attending the meeting may have voluntarily transmitted the information—I think we are wasting a great deal of time on this particular thing.

Mr. Garrett: All right.

Mr. Reed: I believe your inference that testimony that he was called would indicate that the company had other spies there is——

Trial Examiner Kent: I didn't say they had other spies there.

Mr. Reed: That he thought they did. I think it would be just the reverse. If I was called by the company to find [568] out what went on at a meeting; I think I would draw the conclusion they didn't know, otherwise they wouldn't have called me, if they had other spies there. I believe that would be my conclusion.

Trial Examiner Kent: I think that is largely a question for argument by counsel.

Mr. Collins: May I have an expressed ruling? Are we going to be permitted to find out who told Charles Spallino that somebody, who was discharged for drunk driving in the service department, was a company spy at the meeting? Are we

(Testimony of Charles Spallino.)

permitted to have that, or are we not? In the event we don't have it, may I have a ruling on the entire line of testimony, asking that it be stricken.

Trial Examiner Kent: Yes, I think that is a fair proposition, in view of the testimony.

Mr. Smith: Your Honor, I think the testimony is quite material and should stay in. And furthermore, I think it is very strong evidence and indicative to you, as the Trial Examiner, and anybody else that reads the record, that this witness is coming before this Examiner, requesting that rules be made in conformance with what he says and what others will be presented here say.

The fact he is evasive and not desirous of letting this Examiner know all the facts is something which would be weighed very heavily against him. I think the record should stand, to [569] show those facts, to show this witness has been asked very simple questions, questions which he could have answered but that he desires not to for some reason which he doesn't want to explain to the Examiner, nor to opposing counsel.

Mr. Tyre: I object to counsel characterizing the witness' testimony. It is certainly improper for counsel to do that, and he ought to be reprimanded. It tends to intimidate the witness.

Trial Examiner Kent: We have to be realistic. There is no question about it. All witnesses are prone to testify as to conclusions.

Mr. Smith: I think, furthermore——

(Testimony of Charles Spallino.)

Trial Examiner Kent: They probably, in good faith, believe conclusions are made on sound ground. Other people may not agree with that.

I do think that the testimony in the record now isn't entitled to a great deal of weight. There is one fact there, one fact that—of course, I am letting my hair down and speaking for the benefit of counsel—one fact that is that he was called into the company, according to his testimony. I am not finding that as a fact, according to the present record. He was called shortly thereafter. That, of course, indicates the company must have known—if his testimony were true he was called in—that there was such a meeting.

Now, I don't know that this testimony should bother [570] counsel on either side a great deal. I think the testimony, standing as it is, just purely is his conclusion and not supported by giving the names of other witnesses who he said intimated to him that certain people were spies. I don't think that that is entitled to very much weight, and upon which to support a finding.

I would hesitate to make a finding on that sort of testimony. Aren't we wasting a lot of time on this particular thing?

Mr. Collins: Mr. Trial Examiner, in view of what you said, I don't know whether it is necessary for me to make these remarks or not. It is not at all an uncommon occurrence, as you, from your experience, know, for other people who attend union

(Testimony of Charles Spallino.)

meetings to state that to their employers or their friends that so-and-so, and so-and-so were there. They are not necessarily spies.

Trial Examiner Kent: We have to look at this thing realistically. We are not children. In a meeting of that sort any one of the group might very well be friendly with the foreman and tell him he went to the meeting and how many were there, and one thing or another.

Now, that man wasn't necessarily—and there is no inference he was sent there—to find out that information. He is just one of these boys that opens up freely. I think, if the Board wanted to show there were spies there, they would [571] put in more evidence than is presently in. Now, if you want to delve further, it is up to you gentlemen.

Mr. Garrett: I notice the hour is 11:00 o'clock. Will we take the morning recess, your Honor.

Trial Examiner Kent: We will take a five-minute recess, yes.

Mr. Garrett: May it be ten minutes, your Honor? I have some instructions to send down.

Trial Examiner Kent: Very well.

(A short recess.)

Trial Examiner Kent: You might proceed.

Q. (By Mr. Garrett): I take it, then, Mr. Spallino, that you do not care to identify the other persons at the C.I.O. meeting who you think were company reporters, by name.

A. That is right.

Q. How many of them were there besides the

(Testimony of Charles Spallino.)

man you think was a company reporter from the service department?

A. Oh, there was a couple of them, anyway.

Q. Two men. Will you state what departments, if you know?

Mr. Tyre: I object.

The Witness: Departments?

Trail Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Will you state why you think those men were company reporters?

Mr. Tyre: I object, asked and answered.

Trial Examiner Kent: I will take the answer. You can answer.

Q. (By Mr. Garrett): Why do you think they were company reporters?

A. Well, the privileges they had there, and by other fellows reporting it to me, to watch out for those guys.

Q. Any other agents? A. No.

Q. The answer is no? A. That is right.

Q. When you went to Collins' office with your brother after the C.I.O. meeting, did anybody ask you in Collins' office what happened at the C.I.O. meeting?

A. No, they asked me what I was doing at the C.I.O. meeting, what reason did I have to go.

Q. Did anybody ask you in Collins' office at that time what happened at the C.I.O. meeting?

A. Not that I can remember.

Q. Did anybody in Collins' office at that time

(Testimony of Charles Spallino.)

tell you they knew what happened at the C.I.O. meeting?

A. They knew who was there, yes.

Q. Did anyone tell you that they knew?

A. This was a conversation. I can't—I didn't intend to have a hearing here and I didn't take notes. I can't remember everything, who said and what said. I know I was taken over on the carpet and I was told why was I at the C.I.O. meeting and what reason did I go there for, and why I shouldn't go any more. I had been a bad boy. That is all I can tell you.

Q. All right. Now, you can tell me this: Whether or not anyone told you at that meeting that they knew what happened at the meeting?

A. I don't remember.

Q. You don't remember whether somebody told you or not, is that right? [57]

A. That is right.

Q. But you do remember that nobody asked you what happened there?

A. No one asked me what happened there.

Q. As a matter of fact, Mr. Spallino, when you were engaged in your activities in circulating these cards in October and November, 1945, you were interested in helping get the company off the A. F. of L. unfair list, were you not?

Mr. Tyre: I object to that.

Mr. Nicoson: Asked and answered and we have exhausted that subject.

(Testimony of Charles Spallino.)

Trial Examiner Kent: I think the inquiry has been quite extended heretofore on that.

Q. (By Mr. Garrett): Did you ever work for Pioneer Electric Company? A. No.

Q. Do you know whether that meeting of the A. F. of L. representatives in Mr. Collins' office was for the purpose of organizing O'Keefe and Merritt or for the purpose of organizing Pioneer Electric?

A. At that time there was no Pioneer Electric, that I can recall.

Q. This was, then, sometime in October, is that correct?

A. I would say October. I don't know whether it was October or November. It was around that time. [575]

Q. It would be either October or November, is that correct? A. Yes, sir.

Q. And you didn't know about any Pioneer Electric Company until after the election, is that correct?

A. Yes, after the election I heard about Pioneer Electric Company.

Q. When did you first hear about Pioneer Electric Company?

A. That was before this, when the war broke out and they started to build generators there for the Pioneer Electric.

Q. Some of the men received pay checks from the Pioneer Electric and other parts of the opera-

(Testimony of Charles Spallino.)

tion they received checks from O'Keefe and Merritt?

A. That was that closed area, that was Pioneer Electric during the war.

Q. You never worked for them? A. No.

Q. Did you ever get a pay check from Pioneer Electric? A. Never.

Q. Who signed your last pay check, what company?

A. O'Keefe and Merritt has signed all my checks.

Q. You are an O'Keefe and Merritt man?

A. I was until—I have not been back there since.

Q. Since you started testifying in this hearing.

A. That is it.

Q. All right. Now, after this meeting down at Slauson and [576] Avalon at the C.I.O. Hall, which you have told us about, before you went up to Mr. Collins' office, when is the next time you went to a C.I.O. meeting?

Mr. Tyre: Just a minute. So the record will be straight, he did not testify that he ever went to a meeting at Slauson and Avalon. He said it was on Slauson.

Mr. Garrett: I believe that hits a new low, that objection. I have been practicing law for 25 years, and that one is a prize.

Mr. Tyre: It so happens, your Honor—I don't want Mr. Garrett to use this as a means of impeaching this witness. It so happens that there are two C.I.O. buildings. There's the Steelworkers which

(Testimony of Charles Spallino.)

is down on Slauson a couple of miles from another C.I.O. meeting place at Slauson and Avalon. I don't want Mr. Garrett later to say that this witness changed his mind about where that meeting was. There is nothing low about it. I think it is a perfectly proper objection, the question assumes a fact not in evidence.

Trial Examiner Kent: Reframe your question.

Q. (By Mr. Garrett): Where was the C.I.O. Hall on Avalon that you went to? A. What?

Mr. Nicoson: Objected to. He didn't say it was on Avalon. That is what the whole trouble is about. He said it [577] was on Slauson.

Mr. Garrett: The Board's attorney knows where the C.I.O. is better than I do.

Mr. Nicoson: You bet your life. I have been down there and held elections in that particular C.I.O. Hall, under the Smith Connolly Act.

Q. (By Mr. Garrett): Where was this C.I.O. Hall you went to besides being on Slauson?

A. It is closer to Atlantic. I don't know it is the Steelworkers. I don't know the address.

Q. Isn't it the present headquarters of the union you belong to? A. That is right.

Q. Where Mr. Despol has his office?

A. Yes.

Q. Did he have his office here then when you went there? Did he have his offices then when you went to the meeting there just before you talked to Collins and your brother?

A. I didn't know then.

(Testimony of Charles Spallino.)

Mr. Tyre: Object to that question. There has been no proper foundation laid.

Trial Examiner Kent: Read the question, Mr. Reporter.

(The question was read.)

Mr. Tyre: I don't think he has laid a foundation, your Honor, as to what this witness knows about the location of the [578] officers or who had offices in that building.

Mr. Collins: He is getting far afield. I never heard of the necessity of laying a foundation on cross-examination, except to impeach the testimony of a witness thereafter.

Trial Examiner Kent: He may answer, if he knows.

The Witness: I didn't know John Despol at that time.

Q. (By Mr. Garrett): You didn't know Despol at that time. Did you know any C.I.O. officials at at that time? A. I did.

Q. Who?

A. Gilbert is all I know him by. I don't know his last name, Neifer, or something. I can't pronounce his last name.

Q. Was he a man that was organizing the O'Keefe and Merritt plant at that time for the C.I.O. Steelworkers? A. That is right.

Q. Was he at the meeting?

A. He was at the meeting.

Mr. Nicoson: If I had had any idea that was

(Testimony of Charles Spallino.)

what you were shooting at, I would have stipulated with you an hour and a half ago.

Q. (By Mr. Garrett): What is the next time you were in that hall?

Mr. Nicoson: If he was.

The Witness: Oh, after the election.

Trial Examiner Kent: By the election what do you mean, [579] the election of November, 1945?

The Witness: The November election, that is right, government election. That is the government election.

Q. (By Mr. Garrett): Did Mr. Roberts want you to sign up more Stove Mounters there than Mr. Collins told you to sign up?

A. Yes, he did. He had——

Q. Mr. Collins only wanted you to sign up about 25, is that right? A. 50, 25 of each.

Q. How many did you ultimately sign up?

A. Altogether?

Q. Yes. A. About 85.

Q. Did Mr. Collins object to that?

A. Oh, well, he said—no, there was nothing he could do about it.

Q. He was helpless?

A. To go ahead and do it. Yes, he was helpless, sure he was.

Q. Those 85 you signed up, that was about a sixth of [580] the men that were working for O'Keefe and Merritt at that time, wasn't it?

A. How was that?

Q. The 85 people you signed up was just about

(Testimony of Charles Spallino.)

a sixth of what was working for O'Keefe and Merritt at that time, was it not?

A. Well, I'm not very good at figures.

Q. There were about 500 working there on production at that time for O'Keefe and Merritt, wasn't there?

A. No, there wasn't that many.

Q. Approximately how many?

A. Around 300, I guess, somewhere in that neighborhood.

Q. When you went around to get these turkeys signed up and presented the A. F. of L. cards at the same time, did you tell the turkey purchasers and union applicants anything about the unfair list?

A. Well, what I told them, that we had to get off the unfair list, yes, and when the election time came you could vote the way you felt like at that time, you still had time to change your mind and vote whatever you wanted.

Q. That was the policy of the Five and Over Club at that time, was it not? The company had to get off the A. F. of L. unfair list so that it could give employment to the Five and Over members, is that right?

A. The policy of the Five and Over Club was that we wouldn't [581] have anything to do with the company at all. That was our own affairs, whatever the Five and Over Club did, that was the understanding.

(Testimony of Charles Spallino.)

Q. So if the Five and Over Club tried to help get the company off the unfair list, it was because that was the club policy, not because the company wanted that?

Mr. Tyre: I will object to that, calling for a conclusion of the witness.

Mr. Smith: That is a conclusion which this witness can make. He was an officer of the club.

Trial Examiner Kent: He was president at the time. He can state it. Answer that.

The Witness: As far as the membership, they didn't know what was going on. It is the officers' affair. We were in office to look out for the fellows, and anything that the company wanted us to do, so far as the members was concerned, I didn't answer for anything that might have happened. It was up to me to either take care of my members or dictate to them.

Q. (By Mr. Garrett): You mean by that, it was the officers of that club rather than the membership who agreed on the policy, is that right?

A. I never did agree to any policies.

Q. Well, you talked to the other officers.

A. I worked my club the way it was supposed to be. [582]

Q. You were not a czar, were you, you were not a Hitler? A. That is right.

Q. You consulted with the other officers, didn't you?

A. My other officers, as far as their contacts,

(Testimony of Charles Spallino.)

they were in the office and all they did was the bookkeeping.

Q. You worked in agreement with them, didn't you? A. They worked in agreement with me.

Q. Did you ever make any money off operating that lunch stand?

A. Did I make any money? No, not a cent.

Q. You just gave your services as president of the club and did all that work?

A. That is right. You got a pat on the back at the end of the year.

Q. Just for a pat on the back?

A. That is right.

Q. Did you ever have the accounts of that lunch stand audited?

A. Well, I didn't this time for the simple reason that when I took office I was handed an audited report from the officer that was leaving, and it cost twenty one dollars and some odd cents to have that audited, and when we went over it our new officers there, they were \$700.00 in the deal short, they owed beer way back in July, so we was going to have it straightened out by going to another auditor, and I brought [583] it up to Mr. O'Keefe and he looked at it, and I brought it to a fellow that was working for Pioneer at that time, his name is Sam Platts, and I let him go over it and he said that auditor's report wasn't worth 50 cents. Then I showed it to Mr. O'Keefe and he put it in his pocket and carried it around a couple of days, and then he brought it back to me and told me, he says, "Well, Charlie,

(Testimony of Charles Spallino.)

why don't you just forget about the thing? It is going to cost money and forget about the whole story." And he says, "You don't want to put him in jail, you don't want to prosecute him, do you?" He says, "Forget the whole thing." So when I got office. I was busy and I was clear and plenty of money in the bank, and it was—the same treasurer is still in office that was with me, he was re-elected, so we saw that we didn't have to spend any money foolishly and even if I was crooked or otherwise, still, they would not have prosecuted me, anyway, so that we saved that \$20.00 or whatever it is for an auditor's report.

Q. Charles, who stole the \$700.00, do you know?

A. I don't accuse anybody of stealing it.

Mr. Tyre: I object.

Trial Examiner Kent: Objection sustained.

Q. (By Mr. Garrett): Charles, so that you did consult your fellow officers and did not determine the Five and Over Club policy all by yourself without consultation with the [584] other officers, did you?

Mr. Nicoson: Object to that as having been asked and answered about 15 times.

Mr. Garrett: What is his testimony?

Q. (By Mr. Garrett): Were you the Five and Over Club?

A. Objected to for the same reason.

Trial Examiner Kent: He may answer.

The Witness: I was the president of the Five and Over Club.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): How many other officers did it have at that time?

A. At one time we had a secretary and treasurer, but since Cole took office, he cut one office down and he had one man take care of secretary and treasurer, and it was kept that way. They have a vice president, a vice president who is not in the plant. He is an experimental men where he is out of the plant, and when he is in the plant he is so darn busy that you can't get hold of him, so we work this between the treasurer and myself.

Q. Who was the treasurer?

A. Bill Walker was the treasurer and secretary.

Q. Did they have an executive committee?

A. No.

Q. Do you have any directors?

A. No directors. [585]

Q. Do they have any committees besides this grievance committee?

A. At one time we had an entertainment committee, and they failed, I had to do even all the entertainment committee work.

Q. So you and Mr. Walker between membership meetings determined the policy of the Five and Over Club?

A. He handled the money and I handled the situation.

Q. As far as your policy was concerned in October and November of 1945, it was to help get the company off the A. F. of L. unfair list, was it not?

Mr. Nicoson: Objected to as having been asked

(Testimony of Charles Spallino.)

and answered about 15 times, and serves only to clutter the record.

Trial Examiner Kent: I think the record is about as clear as you can get it on that from this witness, at least.

Mr. Garrett: I take it the objection is sustained, then, your Honor?

Trial Examiner Kent: Yes, I will sustain the objection.

Q. (By Mr. Garrett): On the interview when you told Mr. Roberts of the Stove Mounters that you had 138 cards and he read you the Gaffers and Sattler's wage scales, did he make representation to you that he would get the O'Keefe and Merritt employees the same wage scales as Gaffers and Sattler had? [586]

A. He couldn't do otherwise. He would have to give us the same as the other stove manufacturers.

Q. At that time he told you that he couldn't do otherwise, you would have to get the same as Gaffers and Sattler?

A. What he did say, if you ask me, well, that is what the companies have been paying, if they want to pay you more it is up to them, but this is the scale.

Q. Did you look at those Gaffers and Sattler wage scales?

A. Well, it was not correct yet. They were still being worked on at that time.

Q. Did he tell you what they were?

(Testimony of Charles Spallino.)

A. What he thought they were, yes, what they were going to be.

Q. Did you tell him it was a good idea to have these minimum wage scales in effect at O'Keefe and Merritt?

A. I told him that some of the fellows were making more than that.

Q. What else did you tell him about Gaffers and Sattler wage scales?

A. What else did I tell him, or did he tell me?

Q. What else did you tell him? A. Him?

Q. Were they too low? Were they too high? What did you tell him about them?

A. I didn't know anything about Gaffers and Sattler or [587] anything, I didn't tell him anything, only just listening to him.

Q. You have been working in the stove business in this town for 19 years, haven't you?

A. Oh, I have been on the refrigeration end.

Q. You have heard all about Gaffers and Sattler, though, haven't you?

A. I have heard of them, yes, sir, for years.

Q. You knew they were a big factory in the stove business?

A. We were bigger than they were.

Q. You knew they were an important competitor of your employer, were they not?

A. I don't know. I have seen Mr. O'Keefe walk around with Gaffers and Sattler right in the plant, when we were still organized. I think it was just a

(Testimony of Charles Spallino.)

little after the election, he had Mr. Gaffers walking around through the factory with Mr. O'Keefe.

Q. How long have you known Mr. Gaffers?

A. I am not in the position to go out with him, or anything, but I have seen him. I have not been acquainted with him.

Q. How did you know it was Mr. Gaffers that Mr. O'Keefe was walking through the plant with there?

A. In the department somebody knew and said that is Mr. Gaffers, said maybe he is going to buy the place. How should I know? [588]

Q. Did you hear that Gaffers and Sattler were going to buy the place?

A. No, I didn't hear they were going to buy it. There had been talk that the company was going to sell.

Q. Did Roberts tell you that the fellows at Gaffers and Sattler were getting better wages than you were?

A. No, he didn't say that.

Q. He showed you the wage scale that you were expecting to get there?

A. That is what they wanted to get.

Q. Did you tell him you wanted that wage scale in your plant or you didn't want it?

A. I didn't tell him anything.

Q. Do you know what Frank Doyle's payroll classification is?

A. Frank Doyle's classification, all I know he is a clerk in the service department.

Q. Is that the refrigeration department?

(Testimony of Charles Spallino.)

A. Well, they service stoves and refrigerators there.

Q. Is it the service department for refrigeration that he works in?

A. It is stoves and refrigeration, I said.

Q. How long have you known Mr. Bennett?

A. I have known him since about '39 or '30.

Q. Is that William T. Bennett?

A. William T. Bennett. [589]

Q. What is his present position?

A. Well, last I heard he was shop steward. That is what he told me last time I talked to him.

Q. Shop steward of what union?

A. Of the A. F. of L.

Q. Does he put in full time doing that?

A. I don't know. He seems to be bossing around there, putting men to work, gives orders.

Q. Does he do any work for the company, too?

A. How?

Q. Does he do any work for the company, too?

A. Well, I think the company pays him. He gets an O'Keefe and Merritt check. I don't know what else he does there outside of bossing.

Q. At the time you went in to get this 16 cards, did you know what his position with the company was?

A. Sure, I did.

Q. What was it?

A. Same thing I'm telling you now.

Q. Shop steward?

A. No, he was a boss. He could tell me what to do and I would have to do it. I don't know what else

(Testimony of Charles Spallino.)

I could do. That is, if I was working in his department. They can change the capacity of his, whatever it is I don't know.

Q. Who was the superintendent of the refrigeration department [590] at that time?

A. Probably Collins, Cecil Collins here, for all I know. He said he is the boss of that department.

Q. Who is the No. 2 man in that department, if you know? A. Bill Cole.

Q. Mr. Collins' brother-in-law, is that right?

A. That is right.

Q. Mr. Collins knows that department because he worked there as an employee before he became an attorney, is that correct? A. Yes, sir.

Q. So he naturally is interested in the department on account of his brother-in-law, is that correct?

Mr. Nicoson: Well, I submit that calls for a conclusion.

Mr. Garrett: Withdraw it. All right.

Q. (By Mr. Garrett): You just named Mr. Cole. Who is the next man under Mr. Cole?

A. William T. Bennett is, as far as I know.

Q. Do you know what his title is?

A. If I tell you his title it will be changed. He told me he was the shop steward the last time. He is still my boss, telling me what to do, so I think I made that clear.

Q. You don't know anything about Bennett's classification or title except that he is a shop steward, is that right?

(Testimony of Charles Spallino.)

A. He has got authority to tell you what to do, if you are [591] working for him in that department.

Q. Do you know whether he has any authority to hire or fire?

A. As far as hiring and firing, I think there is only one person in there that can do hiring and firing.

Q. Is that Cole or Collins?

A. No, that is between Bill O'Keefe or Fred Rotter. I think they are the only two that does the hiring and firing.

Q. Did you go in with Mr. Bennett and Mr. Doyle when they took these cards in to the refrigeration department? A. No.

Q. Where did you go while they were inside?

A. I stayed at the railing there in the hallway going into the service dispatcher's office, inside of the whole service department.

Q. You stayed outside by the railing?

A. By the railing.

Q. Could you see inside from where you stood?

A. Inside the service department, yes.

Q. How much of the service department could you see from the position at which you stood?

A. Well, I could see quite a ways down the line there. I could see two or three fellows along the work bench.

Q. Could you see any more than two or three fellows from where you stood? [592]

(Testimony of Charles Spallino.)

A. No, because there is a lot of things around there.

Q. Did you see Mr. Bennett take a card to any man inside of the service department?

A. No. I seen them disappear and they came back within 15 minutes and handed me these 15 signatures.

Q. That was 16, wasn't it? A. 15 or 16.

Q. It is not a fact, then, that you saw the men sign the cards in the presence of Mr. Bennett?

A. No, I didn't follow them in there.

Q. And if you have previously given testimony to that effect, you saw the cards signed, that is mistaken, is that correct?

A. Well, I guess that will be mistaken. Anybody can make a mistake, I suppose.

Q. What did you call this room where you went with Roberts and Levascos after you handed Roberts the application blanks, why did you call that the torture room?

A. Well, that is for the fellows that have any authority, the torture room, what I mean is because they don't torture persons up in this room, of course, but they got and took me up there, this is what I meant, that is the room where they can be there and everybody there has authority to use this room, you can have all the loud talk or anything else you want without any interference with anybody. [593]

Q. So rather than being a room called a torture

(Testimony of Charles Spallino.)

room, it is a room that the general officials or whoever would have a key could use, is that right?

A. Yes.

Q. It is the sort of a room that is free for use by everyone?

A. It is for the young men, anybody wants to be alone to talk secrecy or otherwise. [594]

Q. Is that room referred to by anyone else by the name of torture room, or was that just your error on the stand?

A. That was my way of saying it, that is all.

Q. When you talked to Mr. O'Keefe, just before the election, and told him you had gotten the 85 signatures for the A.F.L., that was when you were on your way to the shipping department? You remember the morning the Teamsters had that meeting? You remember that; don't you?

A. Yes.

Q. Did you report that interview to Louie Ortega? A. I did.

Q. The same day?

A. Not the same day. I didn't see him the same day.

Q. Do you recall about how long Louie Ortega has worked for the O'Keefe & Merritt Company?

A. I would say 14, 15 years; maybe longer. I don't know.

Q. Is he a welder?

A. He has been a welder?

Q. Do you know whether he has ever been an upholsterer?

(Testimony of Charles Spallino.)

A. We don't have any upholstering in our plant. I didn't know him before I went into the plant.

Q. In that meeting between Levascos and yourself and D. P. O'Keefe about a month before you met Roberts, when O'Keefe told you, "We want to get off the unfair list of the A.F.L.," did he tell you why he wanted to get off? [595]

Mr. Nicoson: That is objected to as having been asked and answered many, many times.

Mr. Tyre: I object. It assumes a fact not in evidence, namely, the meeting with Roberts was one month after the meeting with Collins and Levascos. I don't think there was any such testimony.

Trial Examiner Kent: It seems to me that is right. You might reframe the question.

Mr. Garrett: I will reframe the question.

Q. (By Mr. Garrett): You testified that you had a meeting with D. P. O'Keefe about a month before the meeting with him, when you were on the way to the shipping room there, where you told him you had secured the 85 signatures. You further testified in that early meeting, the month previously, he told you that he wanted to get off the unfair list of the American Federation of Labor?

Mr. Tyre: I object to that as a double-barreled question. He can't answer yes or no, unless he answers both at the same time.

Trial Examiner Kent: Read the question.

(The record was read.)

Trial Examiner Kent: I think the witness may answer, if he understands the question.

(Testimony of Charles Spallino.)

The Witness: That is a pretty long question.

Mr. Nicoson: Do you understand it? [596]

The Witness: No, I don't understand it. It is so long.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Do you remember the first meeting with D. P. O'Keefe, when Levascos was there, and O'Keefe told you he wanted to get the company off the unfair list?

A. The first meeting he was talking about we had to get in the union. That we had to go——

Q. Levascos asked him——

Mr. Nicoson: Wait just a minute. Let's get the answer.

Q. (By Mr. Garrett): Go ahead. Tell us what was said.

A. That we had to join a union, in order to sell our stoves up north, that we had to get in a union in order to sell this goods, and the A.F.L. was preferable. They would prefer the A.F.L. to the C.I.O., because the C.I.O. is radical. They were asking something they couldn't give.

Q. Was Collins there at that time?

A. No; he told us to talk to Collins, Collins would tell us—we would work under Collins; that he couldn't make no statement.

Q. I think you have testified before that in this interview, when he told you to go see Collins, he said he wanted to get the company off the unfair list. Do you remember that being said? [597]

A. I am likely to say anything, the way you are

(Testimony of Charles Spallino.)

bringing those questions over and over again, over and over. I think I have answered them three or four times. I am not used to being up here and shot at like this. This is my first hearing. This is the first time I have sat four days at a place like this. I am used to working for a living.

Trial Examiner Kent: Mr. Witness, on cross-examination counsel have a lot of lattitude. Their conscience has to be their guide. I hope they have a lot of conscience.

The Witness: If I even had a book of information, to kind of break in on what procedures is of these hearings. I notice they have written transcripts and all kinds of things to work off of. I have my head, and so many things transpired, your Honor.

Trial Examiner Kent: Do the best you can.

Q. (By Mr. Garrett): You have remembered certain things about that interview. You have testified about them. I made notes here with a pencil while I listened to you talk when you were being questioned by Mr. Nicoson. I understood you to say, when you first testified about this interview, under Mr. Nicoson's guidance, that in that interview Mr. O'Keefe told you he wanted to get off the unfair list of the American Federation of Labor. Is that or is it not correct?

A. He told me that several times, yes.

Q. One of the times he told you that was in that particular [598] interview, is it not?

A. It could have been.

(Testimony of Charles Spallino.)

Q. Might have been, you say?

A. Might have been.

Q. Do you recall whether he told you in that particular interview why he wanted to get the company off the A.F.L. unfair list?

A. I don't think he went into details.

Q. Did he ever, in any of the conversations with you, tell you why he wanted to get the company off the A.F.L. unfair list?

A. All I know is he wanted to spread out his business. He wanted to go up north, and he wanted to have the A.F.L. labor.

Q. And did he tell you he couldn't spread his business out into the north if he didn't have the A.F.L. labor?

A. He probably put it that way.

Q. Did he give you to understand that?

A. No, he didn't make me understand anything, because he said to see Collins, that Collins would take over from there.

Q. Did Collins tell you why he wanted to get the company off the A.F.L. unfair list?

A. Because we were on the unfair list.

Q. Well, did he tell you why he didn't want to stay there? A. The way he framed——

Mr. Nicoson: Your Honor, I am going to object to this as having been asked and answered. We have gone over and over and over and over this. I submit there is a limit even under cross-examination which counsel can go to in repeating questions that have been previously put and previously answered. I

(Testimony of Charles Spallino.)

submit this is one of them. He has asked this not only once but many times. I object to it on that ground, as having been asked and answered; cluttering up the record.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: I am sorry if my recollection of the record on the point is not so clear. I will let the answer be taken.

The Witness: Well, like I say, he was wanting these 50 applications to get off that unfair list, 25 Five and Over members and 25 non-members. The weak ones, the ones that were reasonably led; that we could lead them.

Q. (By Mr. Garrett): That was how he proposed to do it?

A. That was how he proposed to do it.

Mr. Nicoson: I submit, your Honor, that even that answer should suggest to you we have been over that about 15 times.

Trial Examiner Kent: I recollect substantially that is the testimony.

Mr. Nicoson: Objected to as having been asked and answered. [600]

Mr. Garrett: I don't think the answer is responsive.

Trial Examiner Kent: I will sustain the objection.

Mr. Garrett: I am going to ask the question again.

(Testimony of Charles Spallino.)

Q. (By Mr. Garrett): Did Collins ever tell you why—not how—but why he wanted to get off the A. F. L. unfair list?

Mr. Nicoson: Same objection; repetition.

Trial Examiner Kent: The answer may be taken.

The Witness: Well, we had to get off the unfair list, in order to sell our goods.

Q. (By Mr. Garrett): Did Collins tell you that? A. Yes, he said that.

Mr. Nicoson: You see, that is about the fifth time that same question and same answer have gone in.

Q. (By Mr. Garrett): Now, when you got the cards from Mr. McMurry, the Machinists' application cards, where did you give them to Bud Daley?

A. I didn't give them to Bud Daley.

Q. Whom did you give them to?

A. Levascos.

Q. I see. Do you know what Levascos did with them? A. He gave them to Bud Daley.

Q. Did you see him? A. No.

Q. How do you know?

A. Bud Daley handed me the cards and said he couldn't get [601] rid of them.

Q. When you were at that meeting in the office of Mr. Collins with the A.F.L. representatives, did they tell you whether they were there to negotiate about O'Keefe and Merritt or about Pioneer Electric?

A. They didn't say anything about Pioneer Elec-

(Testimony of Charles Spallino.)

tric or about O'Keefe and Merritt. We were just talking union there.

Q. This leaflet that you took up with Mr. Collins, who wrote that?

A. I didn't take it up to Mr. Collins.

Q. You took it up with him, didn't you? You discussed it with him?

A. Mr. Collins had the leaflet himself.

Q. Where did you first see it?

A. In Collins' office.

Q. Did you read it? A. Not truly.

Q. Was it typewritten? A. Typewritten.

Q. Now, after you took it to Mr. O'Keefe, later on that day, did Mr. O'Keefe keep it or did you take it away with you?

Mr. Tyre: Objected to as assuming a fact not in evidence. He never testified he gave that leaflet to Mr. O'Keefe the same day. The testimony was it was the next morning. [602]

Trial Examiner Kent: Reframe the question.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Did you take the leaflet from Mr. Collins' office? A. Yes.

Q. Levascos was with you; is that right?

A. That is right.

Q. Was it typewritten or handwritten?

A. Typewritten.

Q. Did you retain any copy of it?

A. There was only one copy.

Q. What did you do with that copy?

A. I handed it to Mr. O'Keefe the next morning.

(Testimony of Charles Spallino.)

Q. After O'Keefe had it, did you ever see it again? A. Never.

Q. Do you know who wrote that leaflet?

A. I don't know who wrote it. Collins had it on his desk.

Q. Now, on the day of the election, about this speech, was that speech dictated in your presence?

A. What speech is that?

Q. The speech you didn't make on the day of the election. A. That is right. It was.

Q. Who dictated it? A. Collins.

Q. Who to? [603]

A. Well, he dictated it to Johnnie Levascos.

Q. Who took it down?

A. It wasn't in writing. He didn't write it. He just put the words in our heads. I didn't even listen to him.

Q. No speech was dictated then, you just had a conversation about a speech; is that correct?

A. Yes. He was dictating the speech of what to say.

Q. Nobody was dictating to somebody else, who was sitting there writing; is that a fact?

Mr. Tyre: I object. It has been asked and answered.

Trial Examiner Kent: I think the record is clear. Counsel means he didn't dictate it to a stenographer, he told you what to state?

The Witness: Yes. In words he spoke what he said, and Johnnie made the speech himself. Johnnie made a boner in his speech when he mentioned that,

(Testimony of Charles Spallino.)

"I just got through talking with Collins just a half hour ago."

There was a certain Raviola there and said, "Why didn't Collins come here himself?" There was a big commotion in the floor on account of that.

Q. (By Mr. Garrett): Levascos told them he had just come from Collins' office?

A. Levascos made that statement in his speech, "I just got through talking with Cecil Collins about a half hour ago," and that started a big commotion in the audience.

Q. Do you recall anything that was said about how the speech originated?

A. How the speech originated?

Q. Yes.

A. In Collins' office, we were called up there.

Q. You didn't have anything to do with preparing that speech?

A. No, I didn't want no part in it at all. In fact, I was asked if I was scared.

Q. In the beginning you agreed to make a speech on the subject of whether the members should go for the A.F.L. or the C.I.O.; didn't you?

A. No. I agreed to speak to them because I had to open the meeting as the president. I would tell them my own feelings, my own impressions. That I would make no speech.

Q. After you and Levascos left Collins' office to go out for a drink before the meeting, did you then get in touch with Louie Ortega?

(Testimony of Charles Spallino.)

A. No, I didn't have a chance to get hold of him.

Q. Did you get in touch with the C.I.O.? [605]

A. About the meeting?

Q. That is right.

A. No, not that I can recall at this minute.

Q. You were telephoning the C.I.O. occasionally along about that time?

A. No, I never did use the phone once to call the C.I.O. I will swear that on the Bible or on my cross.

Q. You didn't phone from the company telephone?

A. I never used a public telephone, that is, the company phone, to call the C.I.O.

Q. Did you use the telephone at this bar where you went with Levascos before the meeting, to call the C.I.O.? A. No.

Q. Did you telephone them? A. What?

Q. Did you telephone them?

A. I have never telephoned before that time, didn't have to. The foremen went around plenty times to tell them about the speech.

Q. About the meeting, you mean; is that correct?

A. Yes.

Q. At the election you say you acted as an observer for the Stove Mounters?

A. Yes; forcibly.

Q. Well, now, just what do you mean? [606]

A. I had refused it. On the last minute Roberts and one of the government agents there came and told me, said, "You are going to be an observer."

(Testimony of Charles Spallino.)

I said, "I told you I didn't want to be an observer."

They pinned a button on me and gave me a list of names to check.

Q. Were you the only observer for the A.F.L. at that election? A. No, sir.

Q. Who else was observer for A.F.L.?

A. I don't remember who they all were. One, that was alongside of me, McNitch or Mac something, a fellow in the machine shop. I don't remember his name.

Mr. Nicoson: I think, if it is important, counsel, the official records of the Board will indicate who the other observer was.

Q. (By Mr. Garrett): You were the one, then, who had to decide whether any votes would be challenged for——

A. No, I didn't challenge any votes. All I did was keep the chart, the list of names, to check, they voted or not.

Q. You didn't make any challenge; is that right?

A. I did not.

Trial Examiner Kent: We might recess at this time until 2:00 o'clock.

(Whereupon, at 12:10 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [607]

(Testimony of Charles Spallino.)

After Recess

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Kent: All right, Mr. Spallino. You might resume the stand. You might proceed, Mr. Garrett.

CHARLES SPALLINO

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-Examination

(Continued)

Mr. Garrett: May I have the last question and answer read, please?

(Question and answer read.)

Q. (By Mr. Garrett): How long after the election was it that you were displaced as president of the Five and Over Club?

A. Let's see, the election was in November. January.

Q. 1946? A. Yes, sir.

Q. Are the elections in the Five and Over Club always held in January of each year? A. Yes.

Q. They are yearly are they?

A. Yes, once a year.

Q. At the time you and Mr. Levascos and Mr. Collins were talking about the speech to be given at the Five and Over Club [608] meeting on election day, that is the day of the NLRB election, did you see anybody make any notes at that time?

(Testimony of Charles Spallino.)

A. The day Johnny and I was at Collins' office?

Q. That is right.

A. No, I didn't see anybody take notes.

Q. Did anybody speak at the Five and Over meeting on the day of the N.L.R.B. election besides yourself and Mr. Levascos? A. No.

Q. Did Mr. McMurray tell you the name of the employee in the machine shop who was claimed as a member of the machinists?

A. He did, but I don't remember his name.

Q. Were you putting in your time at the lunch stand on that day? A. On election day?

Q. That is right.

A. I believe I was. I am not sure.

Q. At that time were you assigned to any department of the company?

A. I was. I had permission to be away from it.

Q. What department of the company were you assigned to?

A. Well, it is the drill press department.

Q. When had you last been there prior to the day of the N.L.R.B. election, how many days previous? [609]

A. Oh, I don't remember the exact day.

Q. Did you spend any time in the drill press department during all the time you were circulating these cards? A. I suppose I did.

Q. Who was your foreman there?

A. Well, it started off with Tony Rozas, and he was my foreman for a little while, and then

(Testimony of Charles Spallino.)

Frank Vacquero took over. Before that I worked for Bill Wheeler in the generator department.

Q. When were you transferred to the drill press department?

A. Oh, I don't remember the date.

Q. Was it after or before you first met Mr. Roberts of the Stove Mounters?

A. I think it was after I already had moved—I mean after. I had already moved before I spoke to Roberts, before I had any meetings with Roberts.

Q. From the time you moved to the drill press department, up to the day of the N.L.R.B. election, had you actually done any work in the drill press department?

A. Well, I was on a mill, mill machine there. I worked on it a while and found out the material wasn't coming out right. I was doing the same as the other fellows was doing, waiting for a setup, for the job to be O.K.'d.

There were several men there waiting for setups. Waiting means that the boss knew you didn't have anything to do, [610] and he couldn't do anything about it. They kept men coming to him and he still couldn't use them. So they just waited for setups.

Trial Examiner Kent: I might interrupt to ask a question. You say you had been working in the generator department prior to working in the drill press department?

The Witness: Yes. It all happened so close there. I was working in the generator department and I was transferred——

(Testimony of Charles Spallino.)

Trial Examiner Kent: Each company had a generator department?

The Witness: O'Keefe and Merritt.

Trial Examiner Kent: I thought Pioneer——

The Witness: That was O'Keefe and Merritt. I never received a check from Pioneer Electric.

Trial Examiner Kent: O'Keefe and Merritt had a generator department?

The Witness: Check.

Trial Examiner Kent: Running at the same time that Pioneer Electric was running, principally a generator department?

The Witness: Yes, sir.

Trial Examiner Kent: That is the only question I had, Mr. Garrett.

Mr. Garrett: Yes. Thank you, your Honor. I have no further questions, your Honor. [611]

Mr. Nicoson: At this time, your Honor, I would like to ask leave to withdraw this witness for the purpose of putting on two witnesses who will have to be out of town day after tomorrow. If their examination is in any wise as lengthy as this has been, we will be hard put to get through with them by quitting time tomorrow, especially working the short hours we are.

The witness will be available for recalling. I have a few questions I would like to ask him on redirect. If any of the parties want any further cross I would like to have him here for that purpose, too. But I am getting on short time with these other two witnesses, and I ask leave to with-

(Testimony of Charles Spallino.)

draw him at this time for the purpose of calling these other two witnesses.

Trial Examiner Kent: I think under the circumstances it might be advisable to do that then, and you can be recalled to the stand after these other two witnesses are examined.

Mr. Nicoson: John Despol.

Mr. Tyre: Mr. Examiner, I understand that there may be further cross-examination by the Machinists or by the Painters.

Trial Examiner Kent: Oh, yes, by the Painters and Mr. Reed of the I.A.M., who may have some questions.

Mr. Nicoson: I want to make it clear that I am not [612] trying to dispense with the witness.

Trial Examiner Kent: No, he is just withdrawn temporarily in order to be sure you can get the testimony in of these two witnesses.

(Witness withdrawn temporarily.)

JOHN DESPOL

called as a witness for the National Labor Relations Board testified as follows:

Direct Examination

Q. (By Mr. Nicoson): Will you state your name for the record? A. John Despol.

Q. What is your business or occupation?

A. I am representative for the United Steel Workers of America.

Q. And as representative of the United Steel

(Testimony of John Despol.)

Workers of America, are you familiar with its purposes? A. I am.

Q. Are you also familiar with its organizational efforts to solicit and take employees of certain factories into its membership? A. I am.

Trial Examiner Kent: By the way, I don't believe I swore Mr. Despol.

(The witness was here sworn.) [613]

Q. (By Mr. Nicoson): Will you now state your name for the record? A. John Despol.

Q. What is your business or occupation?

Trial Examiner Kent: Well, I think the record may show the other questions, I think.

Mr. Nicoson: Well, it may, as far as I am concerned, but I didn't know the feelings of the other parties, so I just thought I would make my record. The witness is now under oath.

Trial Examiner Kent: I don't think there will be any objection to the record made prior to the swearing of the witness to stand as his answers.

Mr. Nicoson: Very well.

Q. (By Mr. Nicoson): There has been some testimony in this record about the steel workers attempting to organize the employees of the O'Keefe and Merritt plant. Are you acquainted with those efforts? A. I am.

Q. Were any of those under your supervision or control?

A. Yes, the organizational drive of the United Steel Workers of America this last fall of 1945 was under my direction.

(Testimony of John Despol.)

Q. Now, directing your attention to that effort or campaign, which ever you choose, can you state about when it began? [614]

A. It began in September, 1945. That is, that is our last campaign.

Q. It has already been stipulated that a National Labor Relations Board election was held on November 20, 1945. Between the time the organizational efforts began as you stated sometime in September, and November 20, 1945, did you have an occasion to call Mr. Cecil Collins by telephone?

A. Yes, I did, when we—about the time that we requested recognition of our union by the company I called Mr. Collins.

Q. Was it before the National Labor Relations Board election? A. Yes, it was.

Q. Now about how long before that did this conversation occur?

A. Well, I believe it was toward the end of October, the best I can recall, or first part of November.

Q. Did you on behalf of the Steel Workers file with the National Labor Relations Board a petition for certification? A. Yes, I did.

Q. I show you a document which, for the purpose of identification, has been marked Board's Exhibit 3, and ask you to examine it and state if that is your signature on that document.

A. It is.

Q. Did you file it with the Board on or about that time? A. I did. [615]

(Testimony of John Despol.)

Mr. Nicoson: I now offer in evidence as Board's Exhibit 3, Petition for Certification of Representatives, with the request that I originally have, if received I be permitted to introduce a copy thereof.

Mr. Garrett: On Exhibit 3, as well as 4, 5 and 6, objections were entered by all the parties to the contract, and, of course, by the respondent, also, and ruling reserved.

I don't believe the identification of that document by Mr. Despol makes any more admissible the document than it was previously, if our objections are good. Our objections were based, of course, as the record will show, on behalf of the unions, parties of the contract, on the contention that these four exhibits, 3, 4, 5 and 6 for identification, related to a collateral matter, to which these unions, parties to the contract, were not parties; that it was hearsay as to them; that they are not bound by any of those documents, parties to the proceeding; and, of course, that the documents relate to certification with a party other than the party with whom these unions, parties to the contract, entered into contractual relations.

Mr. Collins: On behalf of the respondent Pioneer Electric Company and co-partnership, I wish to renew the objection I made at the opening of the hearing.

Trial Examiner Kent: Well, that objection, of course, [616] is somewhat in line with the motion made heretofore that, in effect, what might be treated as a severance would first be determined as

(Testimony of John Despol.)

to whether or not there was a substantial identity of interest between the O'Keefe and Merritt and Pioneer Electric, partnership.

I don't think we can try the case intelligently that way. The issues are so intermingled that I feel I must let the Board's attorney make a complete record. And, in any event, I, for other reasons, think this document is admissible. It may be admitted.

Mr. Collins: I am merely making these objections, Mr. Trial Examiner, so you can make a mental segregation of the evidence.

Trial Examiner Kent: The objection is not based upon the ground this is not the identical exhibit filed with the Board?

Mr. Garrett: No. No objection based on foundation is urged. Of course, no objection is made upon the ground that this paper is not the best evidence of the document it purports to be.

I would like to call your attention to the fact that if ruling were reserved on Exhibits 3, 4, 5 and 6 previously, certainly there is no better reason for their admissibility now, no better reason to admit them now than there was at the time the Court reserved ruling on their admission. [617] Mr. Despol's identification of No. 3 has added nothing, because no objection was urged on the ground of foundation.

Trial Examiner Kent: It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 3 for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 3

Case No. 21R 3101

Docketed 10/23/45

United States of America

National Labor Relations Board

PETITION FOR CERTIFICATION
OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9 (c) of said Act, Petitioner requests the National Labor Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

1. Name of employer O'Keefe & Merritt Co.
2. Address of establishment 3700 E. Olympic Blvd., Los Angeles.
3. Industry, Stove manufacturing.
4. Petitioner (Indicate affiliation, if any) United Steelworkers of America, in behalf of Stove Division, Local 191, CIO.

(Testimony of John Despol.)

5. The alleged appropriate bargaining unit (describe below groups of employees or, individual job classifications) includes all production and maintenance employees, excluding office employees and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

6. The Unit contains approximately 240 employees, of which number a majority have designated or selected petitioner as their bargaining representative.

7. The following individuals or labor organizations claim to represent employees in the Unit: (Name and affiliation, if any) None.

By /s/ JOHN A. DESPOL,

Intl. Representative.

4110 E. Slauson, Maywood Calif.

JE-8111.

Subscribed and sworn to before me this 23d day of October, 1945, at Los Angeles, Calif.

/s/ A. R. TAYLOR,

Field Examiner, National Labor Relations Board,
21st Region, Los Angeles, Calif.

[Endorsed]: No. 21C2689. Date 3/13/46.

(Testimony of John Despol.)

Q. (By Mr. Nicoson): Now, showing you Board's No. 3, which has been received in evidence, and directing your attention to the words "Dock-eted" and thereafter "10-23-45," I will ask you if the telephone conversation was before or after that date?

A. I believe it was after that date.

Q. Did I ask you if you could fix the time by how many days, weeks, before November 20th date? If I didn't, will you please try and give that?

A. Well, it was within a few days of October 23rd date.

Q. Would you now state what was said in that telephone conversation, what Mr. Collins said to you and what you said to Mr. Collins?

A. I told Mr. Collins that we were requesting recognition of the Union by him and hoped to have his consent to the consent of his Company for a consent election.

Mr. Collins replied that he would never consent to an election, and would take the matter all the way through the procedures of the National Labor Relations Board, as high as [618] he could go.

I also, at that same conversation, complained to Mr. Collins in respect to the management permitting men to go through the plant on company time signing employees up into one or more of those unions affiliated with the American Federation of Labor.

Mr. Collins denied any knowledge of such incidents. In fact, he said he would call the superin-

(Testimony of John Despol.)

tendent into his room, where he was talking from. After some delay on the phone he stated on the phone that the superintendent had informed him that he also knew of no cases where men were going through the plant, either A. F. of L. representatives or employees of the Company, signing employees up on Company time.

I then told Mr. Collins that we were going to instruct some of our members on the job, who knew precisely what had been reported to me, namely to sign employees up during Company time and in open manner.

He stated that if that occurred and the management became aware of it they would discharge any or all employees caught doing such an act.

I replied to him that if he discharged anyone for that act, who was a member of our union, we would expect uniform application to any employees who were conducting themselves in similar manner, for any other labor organization. [619]

Mr. Collins, after some other discussions, indicated that perhaps he might not discharge anyone, but simply would give them a disciplinary layoff.

I replied to him that if such occurred that the disciplinary layoff would have to be equal as between any employees who were concerned, whether it be A.F.L. organizations, our own or any other.

Q. Did anything further transpire at that conversation?

A. Well, I don't recall whether it was this par-

(Testimony of John Despol.)

ticular telephone conversation or a later one in which Mr. Collins indicated that if there was any rough stuff as I recall the phrase he used, that the same would apply to myself, if there is any rough stuff on our part. I at that time replied on this and several other occasions that most labor organizations including our own had no choice in these matters but to follow the policy of the employer and let it go at that.

Q. Is that all that you recall transpiring at that time?

A. That is all I recall at the moment.

Q. Thereafter then did you attend a conference in the National Labor Relations Board office with respect to the petition which you have in front of you and which is Board's Exhibit 3?

A. I did.

Q. Can you fix the time of that conference?

A. I believe it was the first or second week in November.

Q. Who was present at that time?

A. The representative for the Board, Miss—I don't recall her name at the moment.

Q. Mrs. Phoenix?

A. That is right, Mrs. Phoenix, and Mr. Blaney for the Teamsters' Union, I believe Mr. McMurray for the Machinists' Union and perhaps other A. F. of L. Unions, I think a Mr. Bassett was there, I don't recall whether he was there or not. Mr. Collins was there, Mr. Rotter, Mr. Conway and myself.

(Testimony of John Despol.)

Q. I will ask you whether or not there were any representatives of the Carpenters present?

A. Yes, I believe Mr. Cordell, representative of the A. F. of L. Carpenters' Union, was present.

Q. I will ask you whether or not any representative of the Moulders was present?

A. Mr. Lazzarini of the Moulders was present.

Q. Did you have any discussion at that time and place? A. I don't get the question.

Q. Was there a discussion at that time and place?

A. Yes. We discussed the question of the consent election.

Q. What was said about that?

Mr. Garrett: Objected to as not the best evidence.

Mr. Nicoson: What would be the best evidence?

Mr. Smith: A transcription.

Mr. Garrett: Well, I made that objection because it seems to me that if representatives of unions are called in, if a representative of an A. F. of L. union here was called in, summoned in to the National Labor Relations Board office in the Twenty-first Region in matters that they have not initiated or instituted they ought to be protected from hearsay accounts of what happened at the meetings. If the Board has not kept the proper record of those proceedings, which would be the best evidence, the Board ought to keep such a record for the protection of all parties. There is no showing that no such record exists of the proceedings by the Board.

(Testimony of John Despol.)

I urge further that in the absence of a showing that we do not have available better evidence of what occurred at this meeting by proper minutes, transcript or otherwise, that this second-hand hearsay should not be admitted, no proper foundation.

Q. (By Mr. Nicoson): Was there any court reporter there taking down any notes that you saw, Mr. Despol? A. Not to my knowledge.

Q. Was there any stenographer there taking down any notes that you saw?

A. Not to my observation. I think Mrs. Phoenix was the only one that took any notes as far as the Board was concerned.

Q. Now, will you state what the discussion was and who made the statement?

Mr. Garrett: Objected to as not the best evidence, objected to as hearsay, objected to as no proper foundation.

Trial Examiner Kent: The answer may be taken.

Mr. Collins: Objected to on behalf of the respondent Pioneer Electric Company on the ground that there is no foundation at all made, and it is therefore not binding on the respondent Pioneer Electric Company.

Mr. Smith: The same applies on behalf of Local 792, Mr. Examiner, no indication that any representative of that union was present.

Mr. Garrett: The same should be stated for the Stove Mounters. There is nothing in the foundation to show that the conversation would be binding

(Testimony of John Despol.)

on them, no representative of the Stove Mounters having been shown to be present.

Mr. Nicoson: Thank you, sir. [623]

Q. (By Mr. Nicoson): Was any representative of the Stove Mounters there, Mr. Despol?

A. I am just trying to recollect whether Mr. Roberts of the Stove Mounters was present or not. I frankly do not recall whether he was or was not present.

Mr. Nicoson: Now, is there a ruling on the objection?

Trial Examiner Kent: Yes, I think the testimony may be taken.

Mr. Smith: Mr. Examiner, may I note—you have been reserving, I believe, and counsel can correct me if I am incorrect in this—well, insofar as this conversation is concerned that is about to be related, I request that you reserve your ruling as to whether or not it is admissible as against the people I represent, namely, 792, until such time as it is tied in with them, if ever. If it is not, then I want to make our motion to strike, or else possibly at that time you will rule on our objection.

Trial Examiner Kent: Until such time as it is tied up, I think the testimony should be taken subject to a subsequent motion to strike as far as your client is concerned.

Mr. Smith: Thank you.

Mr. Nicoson: Will you proceed, sir?

Mr. Garrett: Your ruling is that my general objections have been overruled, is that right?

(Testimony of John Despol.)

Trial Examiner Kent: Yes. [624]

Mr. Garrett: May I have a ruling as to the Stove Mounters then, your Honor? Your Honor will recall——

Trial Examiner Kent: The record shows it is questionable whether or not a representative of the Stove Mounters was present. The testimony may be taken subject to a later motion to strike, which may be made on behalf of the Stove Mounters.

The Witness: May we have the reporter read the question?

(Question read as follows: Will you now state what the discussion was and who made the statement?)

A. The discussion pertained primarily to three phases of our petition for election and certification. First was the question as to whether or not the parties would consent to an election, and representatives for the various A. F. of L. unions, including the Metal Trades Council, had indicated that they would consent to an election, and Mr. Collins speaking for the company, had indicated that he would not consent.

Mr. Garrett: Is the witness talking about something that happened at the meeting or something that happened prior to the meeting? I move to strike this.

Mr. Nicoson: I suggest that counsel listen to the witness and not carry on a conversation down here and he will know what is going on. I also further object to interruption in the middle of this witness'

(Testimony of John Despol.)

answer because he is [625] carrying on this off the record conversation and has not been paying attention.

Mr. Garrett: I appeal to the record. May we have the witness' testimony read up to my interpolation?

Mr. Nicoson: I think the witness should be permitted to answer, so that we can have the whole answer.

Trial Examiner Kent: I think that pertains to the conversation. We will take the whole answer, then we will read the answer, then I will entertain your motion to strike.

The Witness: Mrs. Phoenix then for the Board stated that she, in the event this matter went to a hearing and Board order of election, desired to determine the position of the parties in respect to the bargaining unit. On behalf of the Steelworkers I had indicated and stated that we were desirous of a production and maintenance unit being the bargaining agent. The question came up in respect to the truck drivers, the so-called Teamsters' unit, and we stated that was a question up to the A. F. of L. unions concerned to decide. The course of the conversation and the position taken by some of the A. F. of L. unions indicated that——

Mr. Garrett: There is a conclusion, if your Honor please.

Trial Examiner Kent: Try and confine yourself to the action of the various representatives of the

(Testimony of John Despol.)

A. F. of L. unions, who stated their position with respect to the bargaining unit. [626]

Mr. Collins: Mr. Trial Examiner, I suggest the witness be instructed to answer the question, namely, to say what each one said, not to draw conclusions from the general tenor of the meeting.

Trial Examiner Kent: I think it might be better to get the detailed remarks of the various representatives.

Q. (By Mr. Nicoson): What did each of them say, Mr. Despol, with respect to the unit?

A. The representatives for the Carpenters Union and for the Teamsters Union stated that in the event this went to a hearing they might request separate bargaining units for their particular organizations. But in the event there was a consent election, they might be willing to go along on a overall Metal Trades bargaining unit, namely, the Los Angeles Metal Trades Council of the A. F. of L.

Mr. Collins heard their statements in that regard, and with the possibility that their position might possibly result in a Board order of election that would establish several bargaining units with the C.I.O. possibly certified in one or more and the A.F.L. in others, he asked that he be given more time to decide the question of whether or not he would consent to an election, and assured Mrs. Phoenix that he, Collins, would let her know within a day or two.

Q. Did you make any statement or object along that line?

(Testimony of John Despol.)

A. We raised no objections. We indicated that if the A.F.L. [627] and company could agree on the bargaining unit, we would go along with respect to the inclusion or exclusion of Teamsters' unit that was being discussed at that time.

Q. Was anything at that time said about a date, a possible date?

A. Yes. On the premise there would be a consent election, we discussed the question of a date, and the spokesman for the A.F.L. and ourselves came together on November 20th with the company, holding reservation that because of—Mr. Collins' reservation on the question of a consent election.

Q. Did anything further transpire at that time, that you recall?

A. Nothing I recall at this time.

Mr. Garrett: Now, I would like to have our motion to strike taken under consideration, your Honor, beginning with the answer to the third question back.

Trial Examiner Kent: Yes.

(The following portion of the record was read:

“Mrs. Phoenix then, for the Board, stated that she, in the event this matter went to a hearing and Board order of election, desired to determine the position of the parties in respect to the bargaining unit.”)

Mr. Garrett: I move to strike it on the ground it is [628] hearsay, not the best evidence, not binding on these parties.

(Testimony of John Despol.)

Trial Examiner Kent: The record may remain.

Mr. Garrett: Now, I want to strike the following sentence, which I will ask the reporter to read, on the ground it constitutes a conclusion of this witness and is not a record of anything transpiring at the hearing in question.

(The following portion of the record was read:

“On behalf of the Steelworkers, I have indicated and stated that we were desirous of a production and maintenance unit being the bargaining agent.”)

Trial Examiner Kent: Well, that is, I think, substantially—substantially means this witness said that. I think we are probably getting highly technical.

Mr. Garrett: I move to strike——

Trial Examiner Kent: The record may remain.

Mr. Garrett: I move to strike the next sentence on the same ground.

(The following portion of the record was read:

“The question came up in respect to the truck drivers, the so-called ‘Teamsters’ unit, and we stated that that was a question up to the A.F.L. Unions concerned to decide.”)

Trial Examiner Kent: I think that might be stricken for further clarification. [629]

Mr. Garrett: Now, I want to move to strike all of the answer to the previous question. There is

(Testimony of John Despol.)

one previous question on which he got into this conference. The reporter started with the second question, rather than the first, that brought on this conference. That is the one in which we started talking about things that never happened.

Trial Examiner Kent: Read the previous question.

Mr. Garrett: There is an objection of mine in there.

(The following portion of the record was read:

“Q. Will you now state what the discussion was and who made the statement?

“A. The discussion pertained primarily to three phases of our petition for election and certification. First, was the question as to whether or not the parties would consent to an election, and the representatives for the various A.F.L. unions, including the Metal Trades Council, had indicated they would consent to an election. And Mr. Collins, speaking for the company, had indicated that he would not consent.”)

Trial Examiner Kent: The record may remain. I can't see you are prejudiced at all. That is just preliminary to the development of the outcome of the meeting.

Mr. Garrett: At this time I will ask the hearing officer to order Mrs. Phoenix to appear in this court [630] room with her records, notes, and minutes of the conference in question on the R Case,

(Testimony of John Despol.)

so that her testimony and those records may be used by the counsel for parties to the contract in cross-examination of this witness, who has been permitted to testify.

My position is the Board's attorney can't bring in left-handed evidence about what happens at a meeting that the Board calls, and at the same time withhold records.

Trial Examiner Kent: Assuming a record was made—— [631]

Mr. Nicoson: Just to make this short, if he wants to see the memorandum prepared by Mrs. Phoenix, I certainly have no objection to showing it to him. I don't know under any rules of evidence where that particular memorandum will be permissible in evidence.

Mr. Garrett: I don't want it in evidence. If the Board's attorney is willing to let me see the notes, so I can check them——

Mr. Nicoson: If that is all you want, sir, you are welcome to it.

Mr. Garrett: Thank you.

Mr. Nicoson: Let the record show that I have just now furnished to Mr. Garrett, at his request, a memorandum prepared by Mrs. Phoenix, as a result of that conference.

Mr. Garrett: Consisting of three pages.

Trial Examiner Kent: We might recess for five minutes while Mr. Garrett reads it.

(A short recess.)

Trial Examiner Kent: On the record.

(Testimony of John Despol.)

I wonder, after you gentlemen have seen the Field Examiner's memorandum, whether you might be willing to stipulate that is what actually transpired at the conference?

Mr. Garrett: I would be willing to stipulate.

The Witness: Your Honor, I wish to correct my testimony. Mr. Lazzerini was not present, Mr. Roberts was for the Stove Mounters Union. I had the two confused in my mind. [632]

Mr. Nicoson: I will stipulate that is what occurred.

Trial Examiner Kent: Would that pretty well cover the ground?

Mr. Nicoson: It is all right with me if it is agreeable to all the parties.

Mr. Garrett: I will stipulate that the record of Mrs. Phoenix, as to that conference, as shown in her memorandum which is in the Board's file in the "R" Case is a true account of what happened at that conference.

Mr. Smith: Mr. Examiner, all I would like to do in regard to this is make the same objection and request the Examiner make the same ruling, reserve his ruling.

Trial Examiner Kent: No representative of your union was present there?

Mr. Smith: That is right.

Trial Examiner Kent: The general objection; it is not binding on your line.

Mr. Smith: Might I state this: There is no point

(Testimony of John Despol.)

in taking time every time to make that same objection. At the end of the hearing possibly we can at that time tell you exactly what we feel that is subject to strike, because it is not tied in.

Trial Examiner Kent: Yes.

Mr. Smith: And it would save—possibly expedite it.

Trial Examiner Kent: My position is, of course, these [633] issues are so intermingled it is a little bit dangerous for me to take a chance and make a ruling at the early stages of the proceedings that may not get me in difficulty, and may not make a confusing record later. We will treat your motion, in substance, as a continuing motion to strike.

Mr. Collins: I am willing to join in this stipulation, so far as the O'Keefe and Merritt Company is concerned. I don't want to stipulate on behalf of the Pioneer Electric. I don't think it should be binding on them; they weren't present.

Trial Examiner Kent: Well, I suppose the statement shows only the presence of the O'Keefe and Merritt. I don't think it is necessary to go any further than that.

Mr. Reed: Mr. Examiner, I would like to enter a continuing objection on behalf of the International Association of Machinists as to being bound by this line of testimony, and you may reserve your ruling on the same basis.

Trial Examiner Kent: That is the same as the other gentleman indicated, no representative of your union was present?

(Testimony of John Despol.)

Mr. Reed: That is correct.

Trial Examiner Kent: Yes. There may be a continuing objection. It may be treated as a continuing objection. I will consider it later.

Mr. Nicoson: Re: O'Keefe & Merritt Company. Case No. 21-R-3101. Memo. 11-5-45:

"A conference was held today on the above case. Those present were Mr. John D. Roberts of the Stove Mounters, Nick Cordil of the Carpenters, W. T. Blaney of the Teamsters, Cecil Collins, attorney, and F. F. Rotten, personnel manager for the company, and John Despol and Gilbert Anaya and G. J. Conway for the Steelworkers.

"Roberts stated that——"

Mr. Collins: Just a moment. Can we go off the record?

Trial Examiner Kent: Yes.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Nicoson: It is understood then I may have a copy of this made and entered?

Mr. Collins: Submit the original and substitute copies.

Trial Examiner Kent: Yes; two copies may be introduced.

Mr. Nicoson: I will bring the original in here, and I will offer the original and with permission substitute copies.

Trial Examiner Kent: Yes.

Mr. Nicoson: I take it the parties aren't inter-

(Testimony of John Despol.)

ested in these subsequent memoranda of November 7th, November 8th.

Mr. Garrett: I don't think they are relevant.

Mr. Nicoson: May we have that Board number next in order reserved for this document? [635]

Trial Examiner Kent: Yes. The next Board's exhibit will be reserved.

(Thereupon, the document referred to was marked as Board's Exhibit 9, for identification, and was reserved.) [636]

Q. (By Mr. Nicoson): After the election was held on November 20th, as has been stipulated here, did you thereafter meet with Mr. Cecil Collins?

A. Yes. I arranged for an appointment with him to meet him and present him with the contract of United Steelworkers of America that was submitted as the basis for negotiations by our union.

Mr. Nicoson: Please mark this document for identification.

(The document referred to was marked as Board's Exhibit No. 10, for identification.)

Q. (By Mr. Nicoson): I show you a document which, for the purpose of identification, has been marked as Board's Exhibit 10, and ask you to take it and examine it, and state, if you know, what it is.

A. This is a copy of the agreement we submitted to the company as the basis for our negotiations.

Q. When did you submit that document?

A. It was about the middle of December.

Q. To whom did you submit it?

(Testimony of John Despol.)

Mr. Garrett: I didn't get that. About what time?

The Witness: The middle of December.

Mr. Garrett: Thank you.

Q. (By Mr. Nicoson): To whom did you submit it? A. Mr. Collins. [637]

Q. Where was Mr. Collins at the time?

A. In his office.

Q. Where is his office?

A. It is located in the offices of O'Keefe and Merritt Company's plant in the 3800 block East Olympic.

Q. Was any other person present besides Mr. Collins and yourself?

A. I am not sure, but I believe Mr. Rotter was present.

Q. Anyone else?

A. Not to my recollection at that time.

Q. Just the two of them?

A. Mr. Conway accompanied me at the time.

Q. Who is Mr. Conway?

A. Mr. Conway is a representative of the United Steelworkers of America.

Q. Are his initials G. J.?

A. G. J. Conway.

Q. I believe you testified that you presented a copy of this contract to Mr. Collins.

A. That is right.

Q. Did you have any discussion about it?

A. We stated that it was a contract so far as—I stated so far as the contract was concerned, it

(Testimony of John Despol.)

conformed to the standard provisions of our contracts wherever there were procedural questions involved, such as grievance procedure, [638] arbitration, seniority, and that the wage part of it conformed with the union's wage policy at that time, which was a request for a 25 cent per hour increase. Mr. Collins stated that he would look the document over, and I then requested that we set a time for negotiations, because the events that had occurred between the election and our presentation of this contract disturbed myself, because of possible unfair labor practices occurring after the election, and I asked Mr. Collins to set not one but several dates for negotiations so that we could go through the contract and negotiations as fast as was reasonably possible.

Q. Did you at that time go through the proposed contract item by item?

A. Not at that particular time.

Q. Did you discuss anything else except the procedural provisions, as I believe you put it?

A. Well, Mr. Collins stated that he would be willing to sign a contract, providing for a wage policy that conformed to the average of his industry, as he defined it.

Q. Did he state what that was?

A. He stated that he would meet the going rate of the industry.

Q. Did he state what the going rate was? Were any figures mentioned?

A. No specific figures were mentioned. [639]

(Testimony of John Despol.)

Q. Was there anything further said about any other clauses in the contract?

A. Nothing further was said. Mr. Collins said he would sign the contract as presented with that understanding on the wage question. I said, "You better read the contract, first, before you state that you will sign it," and there was laughter on the part of both the part of Mr. Conway and Mr. Collins when I remarked that he should read the contract first.

Q. Is that all you can recall that occurred?

A. That is all I can recall at the meeting when we presented the contract to Mr. Collins.

Q. Was there another meeting?

A. Yes, there was.

Q. When did it take place?

A. The latter part of December, just prior to Christmas.

Q. Where did that take place?

A. Will you repeat the question?

Q. Where did the meeting take place?

A. That also took place at Mr. Collins' office in the O'Keefe and Merritt building.

Q. Who was present at that time?

A. Mr. Roberts—I mean Mr. Rotter, Mr. Collins—no, just Mr. Collins, myself and Mr. Conway.

Q. Anyone else present at that time?

A. Toward the end of the meeting a young woman who Mr. [640] Collins said was a client of his, came into the meeting. She was waiting for him.

(Testimony of John Despol.)

Q. Did you have a conversation at that time and place? A. Yes, we did.

Q. State what Mr. Collins said, what you said and what Mr. Conway said.

A. Mr. Collins again repeated his discussion on the company's wage policy, that I have just related, and said that he would agree to meet the going wage in the industry, and that he would be agreeable to a maintenance of membership and checkoff provision in the contract, that he had not had time to thoroughly go over the balance of our contract. I said that we wanted to go over it, our proposed contract, item by item, and paragraph by paragraph; that with respect to the union security provision, we wanted a full union shop clause in the contract, and that we would discuss wages when we came to that particular part of the contract negotiations where it might be appropriate to discuss the wage increase and the procedural clauses of the contract.

Q. Did Mr. Collins say anything about the union shop?

A. Mr. Collins said he would not agree to a union shop.

Q. Anything further transpire at that meeting that you recall?

A. Nothing that I recall which is pertinent.

Q. Did you have any more meetings with Mr. Collins? [641]

A. Yes. We arranged to, had arranged a follow up meeting which Mr. Collins was ill and was unable

(Testimony of John Despol.)

to make, and we did not meet again until after the first of the year.

Q. About how long after the first of the year did this next meeting occur?

A. I believe it was the first week of January. If I had a calendar I could give fairly accurate dates, I think.

Trial Examiner Kent: I have one here.

The Witness: It was either Wednesday or Thursday, January 2nd or 3rd. I don't recall which day it was.

Q. (By Mr. Nicoson): Where did the meeting take place?

A. At Mr. Collins' office in the O'Keefe and Merritt building.

Q. Who was present?

A. Mr. Collins and a committee of employees from the plant who were, I was told, representing the A. F. of L. interests in the plant. [642]

Q. Who told you that?

A. Mr. Collins stated that he thought it advisable to have these negotiations open and above board, and that he had requested the A. F. of L. Committee to be present. Mr. Levascos was one of them.

Q. Was that Mr. John Levascos?

A. Mr. John Levascos.

Q. Do you remember any of the other names?

A. I don't recall their names offhand. I made a note of their names.

Q. Do you have that note with you?

(Testimony of John Despol.)

A. I don't have that note with me, no, but I made a record of it.

Q. Had you had anything to do with having this so-called committee in there? Will you read the question to him?

(Question read.)

A. No, we at no time requested that any committee representing the A. F. of L. be present. At that meeting I stated that we had no particular objection at that time to their presence, in view of the fact that we were going to discuss the procedural parts of the contract which would affect all employees irrespective of what union they may be affiliated with.

Q. Did you have such a discussion? Did you have a discussion about portions of the contract?

A. Yes.

Q. What was said and who said it?

Mr. Purver: Is that the note?

The Witness: Those are my notes, yes.

Q. (By Mr. Nicoson): I will hand you what you have indicated are your notes. I also offer them to the various counsel here. I think I better do it first.

The Witness: This is the second meeting. Also I would like to have the original contract negotiation notes. The names are written there.

Q. (By Mr. Nicoson): I hand you a document which you indicate to me are as you describe them your notes, and ask you to examine it and state if from examining that you can refresh your recollec-

(Testimony of John Despol.)

tion as to the persons there present on the so-called A.F.L. Committee.

Mr. Collins: At which meeting is this?

The Witness: This was the first meeting on Tuesday, January 1st.

Mr. Collins: Was this the very first meeting or the second meeting?

The Witness: This was the first meeting after the new year.

Mr. Garrett: Was this on January 1st or 2nd.

The Witness: It was on January—Thursday, rather January 3rd. [644]

Q. (By Mr. Nicoson): Now, having refreshed your recollection, can you state the names of other of the so-called A. F. of L. Committee that were present at that time?

A. Yes, Mr. Levascos I have already stated he was present, was there, and a man by the name of Jake Derosé, a Mr. Joe Sanchez and a Mr. Doyle also present at that meeting with Mr. Fred Rotter.

Q. Will you now state what was said at that time and place and who said it.

Mr. Collins: Mr. Nicoson, I still don't know whether this is the first, second or third meeting that he is talking about.

Mr. Nicoson: According to his testimony, this was the third meeting, the one happening in January, January 3rd, 1946.

Mr. Garrett: Was Conway there with you?

The Witness: Mr. Conway was not present at this meeting.

(Testimony of John Despol.)

Q. (By Mr. Nicoson): What was said and who said it?

A. At the outset of the meeting Mr. Collins again reiterated the company's position with respect to wages, which is a repetition of what I have previously stated, and that he would not agree to a union shop provision but would agree to maintenance of membership and a checkoff. He also said if we desired it we could have a committee of our own from the [645] plant, and I replied that we would determine that on our own part, when it would be desirable to have a committee of the Steelworkers' union from the plant present, that we might possibly resort to having all of our members in the plant on such a committee, if the negotiations required it. After Mr. Collins had stated the company's position in respect to union shop and wages, I requested we go over the various clauses of the contract section by section. I discussed the hours of work clause, and Mr. Collins wanted to read that more thoroughly, he was not ready to decide on the exact language, but did state that the company would pay the present practice of time and a half after 8 and time and a half after 40 hours, and that he wanted a clause pertaining to company rules included in the contract. He agreed to our management clause that we submitted to him. He made it clear that all the things he was agreeing to were tentative agreements subject to final completion of a contract and execution of a contract between the parties. We did not go further into the wage clause,

(Testimony of John Despol.)

so far as the amount of the wage increase, as I suggested that we clean up the easier parts of the contract first.

Q. Anything further?

A. We discussed the rate establishment clause, in changing the rate for an old job whose content had been changed or for establishing a rate for a new job that comes into the [646] plant, and Mr. Collins indicated tentative agreement. On the night shift bonus he indicated that he would take the position of maintaining the present practice of 5 cents an hour for the second shift and 10 per cent for the third shift. On holidays he said they would not change their present practice, which was to pay time and a half for holidays worked, but to pay nothing for holidays not worked, the demand of the union being paid holidays, and double time for holidays worked. On seniority Mr. Collins indicated tentative agreement.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

The Witness: Mr. Collins said he would tentatively agree to our proposal with one exception.

Mr. Garrett: Excuse me. May I inquire at this time what have these contract negotiations to do with any of the issues in this case?

Mr. Nicoson: Well, there is a refusal to bargain issue. Now, I am trying to show that they did not bargain.

Trial Examiner Kent: Yes, I think that is material. That is one of the issues.

(Testimony of John Despol.)

Mr. Collins: If that is the purpose of the examination, at this point I offer to stipulate again that we will sign the same contract with the C.I.O. on behalf of the O'Keefe and Merritt Company that was signed with the A. F. of L. on behalf of the Pioneer Electric Company, with the exception [647] that we will give them a maintenance of membership and the customary escape clause. I am making that offer because to the best of my information and belief there are a great many members of the A. F. of L. employed by the O'Keefe and Merritt Company at this time, and have been all during the time of these negotiations.

The Witness: There are also members employed by the Pioneer Electric Company who are members of our union.

Mr. Nicoson: I can't stipulate to that.

Q. (By Mr. Nicoson): Anything further transpire at that time and place?

A. Mr. Collins said that he could not agree to the part of the seniority clause Paragraph F which provided for preferential seniority for grievance committeemen and local union officers employed by the company. Mr. Collins tentatively agreed to our grievance procedure clause. He would not at this particular meeting agree to our proposed unfair discharge clause, and tentatively agreed to the arbitration provisions, also to the provisions on recall to employment, also to our proposed provisions for leave of absence, except that he desired modifica-

(Testimony of John Despol.)

tion and the limit of leave of absence for any employee taking employment with the union.

Mr. Nicoson: Mr. Examiner, may we please have order.

Trial Examiner Kent: Please, gentlemen, please do not start any discussion during the examination of a witness. [648]

Q. (By Mr. Nicoson): Proceed.

A. He tentatively agreed to our safety and health clause, subject to a provision that it would not exceed the legal requirements of the company under the state law, and to the bulletin board. That was the parts of the agreement that we discussed at that particular meeting.

Q. Anything said about wages other than what you have testified to here?

A. Not at that meeting.

Mr. Smith: Mr. Nicoson, will you excuse me a moment, please. Mr. Examiner, that conversation here was merely I was asking Mr. Garrett about something that I thought possibly I did not have full knowledge of, and that was the stipulation offered by Mr. Collins, correct me if I am wrong in this; it seems to me that if O'Keefe and Merritt are now willing to stipulate as is offered, then only those matters which are deemed undesirable to the charging party should be the topic of consideration before this hearing. I think you have inherent power as Trial Examiner to expedite this hearing and to confine it down to matters which these parties cannot resolve between themselves. If they are willing

(Testimony of John Despol.)

to sign a contract of the type that Mr. Collins indicates, I think everything else pertaining to that is immaterial, and if there are any parts that are at issue, the testimony should be confined to that. I think that you have within [649] your power to require that all questions shall pertain to that exclusively. There is no reason to go into matters which the charging party is willing to say, let's cut short the trial by accepting them and stating we will sign a certain document. Why prolong this thing two or three or four weeks extra? Let's clear those issues that still remain, that admittedly are issues between the parties, and everything else is stopped by the stipulation.

Mr. Nicoson: It is rather obvious, if your Honor please, at least it is to me, it may not be to Mr. Smith, that what Mr. Collins has offered to stipulate is an empty barrel. First he says, I will write you the contract that we have in O'Keefe with the maintenance of membership clause whereby all of the employees can get out from under. If you call that bargaining in good faith, I will have to differ with you, and I will differ with Mr. Smith. I am also sorry that I have to differ with Mr. Smith because obviously—strike the obviously, but I fear that he is not fully acquainted with the decisions of the National Labor Relations Board, particularly as to bargaining in good faith. About nine years of law have been built upon that, and particularly because our case will show that they at no time in good faith bargained with the C.I.O.

(Testimony of John Despol.)

Mr. Smith: Well, I think, Mr. Nicoson, I do concede I am not as well versed on those matters as you, and I say that [650] possibly those issues which still remain to be cleared up by this particular witness to indicate bad faith or whatever is to be shown, ought to be specific rather than the entire picture as a whole, because apparently they are willing to make a contract now and all you have to decide is whether or not that contract which they are willing to enter into is or is not one which is indicative of acting in good or bad faith, and all these other conferences and discussions and everything else are immaterial. All you have to decide is whether or not the contract which they are willing to decide is one which is a proper one in view of their obligations. I think you should make that determination. If you decide that it is not a fair one, then perhaps you can say, "We will consider those aspects which are unfair here, and see if there can be further stipulations regarding those aspects; if not, why should these other issues be complicated in order to show a dozen and one of these other factors? I think if the Examiner would take the time to check into the specific matters which are still being deemed objectionable, then we can offer this, perhaps Mr. Collins will stipulate to those, or in the event you find they are unfavorable and unfair to him, these other issues can be narrowed here and there is no reason to go into the matters which both parties are not at issue on. [651]

Mr. Collins: Mr. Trial Examiner, in answer to

(Testimony of John Despol.)

the statement of Mr. Nicoson, it is obviously an unfair contract or empty barrel, or something of that kind, I would like to point out to Mr. Nicoson and to the Trial Examiner there must have been literally hundreds, thousands of maintenance of membership contracts with the customary escape clause approved by the War Labor Board all during the war. This is the time we are alleged to have committed unfair labor practice, during the war, or thereafter. At least the War Labor Board was still in existence.

The Witness: It was not in existence on January 1st.

Mr. Collins: Be that as it may, the maintenance of membership and the customary escape clause were in effect at that time. I venture to say while you were serving on the War Labor Board you have approved numerous of that type of contracts. I know I have appeared before the Board on that type of contract.

Mr. Smith: My thought is that possibly you can recognize these different one, two and three points and take testimony directly on those points, and then you can decide whether those matters should or should not be included in the contract. Apparently there is no argument that a contract should not be entered into.

Trial Examiner Kent: I don't think, in view of the nature of the allegations of the complaint, we can very [652] well do that.

(Testimony of John Despol.)

Mr. Collins: What allegation would my stipulation be in conflict with?

Trial Examiner Kent: If I could assume the proof would show that the allegations could not be sustained, that the Pioneer Electric partnership is not in effect, as alleged, the same as O'Keefe and Merritt, we might save a lot of time.

The issues here are rather complex and intermingled. I think the only safe thing to do is to proceed and let the Board make a complete record.

Mr. Collins: Just a minute. I want to amend my offer of stipulation. Mr. Nicoson, in view of your statement, are you willing to enter into this stipulation: I will stipulate we will sign the same contract we have heretofore signed with the A. F. of L., with merely the maintenance of membership and forget about the escape clause.

Mr. Nicoson: I wouldn't stipulate——

Mr. Reed: Mr. Examiner, if I may be heard.

Mr. Nicoson: He directed the question to me, and I thought perhaps I would answer.

Mr. Reed: I have been waiting for the recognition here for some time.

Mr. Nicoson: I apologize, sir. I am very sorry.

Mr. Reed: I have not taken much time in this record. I [653] will submit that any offer made by the company of the nature that is made publicly is not and does not constitute bargaining in good faith. The place for the Company to present a proposition to the union is not at this hearing, but in a collective bargaining session with the union.

(Testimony of John Despol.)

Any statement or offer made here cannot be interpreted as collective bargaining in good faith. The intent on the part of the Company to sit down with the union and so collectively bargain with them, and such a statement, should be and could be recognized by the Trial Examiner as being evidence of the Company's willingness at this time to sit down with the Union and bargain in good faith in respect to the O'Keefe and Merritt Company.

If the Trial Examiner will recognize such an offer of the Company as being made in good faith, I believe this line of question is irrelevant and unnecessary, and merely is taking up the time of the session and the record.

I submit I think your Honor may permit counsel to get together, Union representatives, and give them whatever time both sides deem necessary, to see what can be worked out. If everything is not worked out to the satisfaction of both parties to come back before you at some subsequent date and say, "Matters 1, 2 and 3 can't be worked out. Please try to help us decide them."

Trail Examiner Kent: That, of course, is a matter that [654] counsel have to consider. It is not within my province to order it.

Mr. Collins: How could the charging parties appear before this tribunal in good faith and say we are guilty of unfair labor practice charges, to wit, we won't bargain with them in good faith, when we come in in open court and offer to sign a contract. That is more than they are entitled to.

(Testimony of John Despol.)

We can bargain for five years if we have two points we can't agree on.

The Witness: There are far more than two points we are not in accord on. I would say the majority of the contract is in dispute. At no time has Mr. Collins submitted in writing, requested by any union, the contract he was willing to agree to. We asked for a written counter proposal. He has stalled us on that question, to say nothing of the phase that enters into it with respect to Pioneer Electric and the date of execution of a so-called contract with this Pioneer Electric.

Mr. Collins: My contract is now written. I offer to stipulate I will sign the same contract with Pioneer Electric——

Mr. Nicoson: I have declined to stipulate.

Trial Examiner Kent: I think we had better proceed.

Mr. Smith: Mr. Examiner, do you think it is fair to make the unions present here bind through their counsel, [655] to sit during a proceeding they take no issue in, with evidence being brought out. If they are in agreement with the facts there were these meetings in Mr. Collins' office and there has been an election, what is the point in having testimony? [656]

Trial Examiner Kent: There are issues, and I don't see how they can be resolved——

Mr. Smith: Those aren't issues.

Trial Examiner Kent: ——without making a record, and a complete record. In view of the alle-

(Testimony of John Despol.)

gations of this complaint, I think we had better proceed.

Mr. Smith: Assuming for the sake of argument, that the Trial Examiner——

Mr. Nicoson: Is this going to be turned into a speech-making affair? If it is, I will go and write some letters.

Trial Examiner Kent: No.

Mr. Nicoson: We have had this over five or six different times. It certainly isn't an objection.

Mr. Collins: I wish to know if I am now being restrained from my objection by the Trial Examiner or the Board's attorney.

Mr. Nicoson: Certainly the Board's attorney is trying to stop you from giving an objection——

Trial Examiner Kent: There was an offer to stipulate and the Board's attorney has not agreed with the stipulation.

Mr. Collins: Very well. I now object to this entire line of testimony on the ground it doesn't tend to prove or disprove anything at issue, in view of the offer of stipulation. I move all the testimony of this witness heretofore adduced be stricken on the same ground. [657]

Mr. Garrett: We make the same motion and same objection.

Trial Examiner Kent: I will overrule the objection.

Q. (By Mr. Nicoson): Is there anything further that transpired at that meeting, which you now recall, Mr. Despol?

(Testimony of John Despol.)

A. You refer to the meeting the first week of January?

Q. That is correct.

A. Nothing further that I recall. We set a date for another meeting, which was Tuesday, January 8th.

Mr. Collins: Just a moment. There is no ruling on my motion. I made a motion and objection. May I have a ruling on it?

Trial Examiner Kent: The last motion I overruled. What is the motion that you——

Mr. Collins: I move the testimony of this witness be stricken on the ground it doesn't tend to prove or disprove anything at issue in this case.

Trial Examiner Kent: I think the record shows I overruled that motion.

Mr. Collins: I now wish to object to any further testimony of this witness upon the same grounds.

Trial Examiner Kent: The same ruling.

Mr. Garrett: We make the same motion and same objection.

Trial Examiner Kent: I will overrule the motion.

The Witness: We agreed to meet on Tuesday, January 8th. [658]

Q. (By Mr. Nicoson): Did you meet on that date? A. Yes, we did.

Q. Where did you meet?

A. We met at Mr. Collins' office in the O'Keefe and Merritt building, the same place as before.

Q. Who was present at that time?

(Testimony of John Despol.)

A. If I may have my notes I can cite the members of the A.F.L. committee that were present. Mr. Collins was present, myself, and new A.F.L. committee consisting of Mr. Cunningham, Mr. Castro, Mr. Daley and Mr. Arlotti.

I stated then that this would be the last time that we would be agreeable to having any committee purporting to represent A.F.L. Unions in the plant present, because it seemed to me then that we would finish our discussions of procedural matters of the contract at that time and would be getting into the wage and cost factors of the contract, and that I did not wish to have any committee purporting to represent A. F. of L. interests present at such negotiations.

Q. What further was discussed, if anything?

A. We proceeded to go back through the entire contract, as we had before, going into those questions Mr. Collins said that he wanted to think over or consult with others in. The particular one was the clause referring to military service and certain privileges to be granted to veterans of World War No. II.

Mr. Collins then stated in that particular issue that [659] he had consulted with the American Legion Post in the plant and that they had objected to it, and therefore he, as the company, was not going to agree to it, although at the previous meeting one of the veterans of the so-called A.F.L. committee had agreed with me that it was a good clause on behalf of the veterans. We discussed the——

(Testimony of John Despol.)

Q. By the way, was that A.F.L. committeeman present at this second time the A.F.L. was in there?

A. No, he was not present the second meeting.

Q. What further was discussed, if anything?

A. Mr. Collins stated that he had not found the time to carefully read all the language of our contract, and that he was still not sure of some of the language.

I then requested that he give us a written counter-proposal to each and every clause in the contract.

Q. What did he say about that, if anything?

A. That was Mr. Collins—Mr. Collins said he would give us a written counter-proposal. I asked him when he could deliver same, and he indicated that within the week he would have it within our hand.

I then discussed the discharge clause of the contract that we passed over the previous meeting.

Mr. Collins then tentatively agreed to it, subject to one change in language, dealing with the question of the retroactive date for compensation for any employee who was deemed [660] unfairly discharged by an arbitrator.

Mr. Collins then presented an hours of work clause, which provided for the time and a half after eight hours and time and a half after 40, but omitted reference to any of the other items in respect to hours of work that we had submitted.

I argued at length with Mr. Collins in respect to these other items, and requested he either say yes or no to them or submit them in written form.

(Testimony of John Despol.)

Mr. Collins then again repeated his previous statement, that he would agree to the prevailing wage scale of the industry, and he would sign a maintenance of membership and checkoff clause, and would sign that kind of a contract. But it went no further, and I said we would argue the question of the wages, that our position was still an increase for all employees the union was the certified bargaining agent for, of 25 cents per hour, and we would produce certain economic arguments in respect to that particular issue.

We then went through the same issues we had gone through before, making certain minor corrections, such as the benefits and privilege clause.

Mr. Collins said he wanted to add to it, that it would not include the annual Christmas bonus that the company had been giving.

I asked him, "Well, if he wouldn't include it in the [661] basic contract, would he include it in a supplemental wage section to the contract covering the question of wage scale and the amount of the Christmas bonus.

Mr. Collins said, no, he would not. He did agree to the part of the military leave clause that pertains to the present G.I. Bill of Rights, in which an employee who was a former employee of the company, would have his seniority continued while he was in service and would secure his job back, providing he applied within the 90-day period after being released from service, from military service; but refused to agree to that military service clause

(Testimony of John Despol.)

that would give any veteran, even though he was not formerly employed by the company, seniority recognition for the time spent in service.

We went through the balance of the contract, and Mr. Collins stated that he was not sure of the language. And again I repeated my request for a written counter-proposal so I would know definitely whether Mr. Collins was or was not willing to agree so far as the precise contract language was concerned.

Q. Did Mr. Collins say whether or not he would make such a submission?

A. As I have stated, he said he would submit that proposal within the following week. We set a meeting for the following week, any date for the following week in which to discuss this [662] counter-proposal.

Q. Was that meeting held the following week?

A. As clearly as I can recall, I believe Mr. Collins was unable to meet on the particular day we had requested, and we met a few days later.

Q. Can you fix the time of this meeting?

A. Yes, that meeting was held on January 25th.

Q. Between that meeting and the one that you have just gotten through telling us about, had you communicated with Mr. Collins in any way, or did he communicate with you in any way?

A. I believe I had our office girl call in respect to receiving the copy of the proposed written proposal, that we had not yet received it. We had also

(Testimony of John Despol.)

called him for the meeting that was set for January 25th.

Q. Did you meet with him on January 25th?

A. I met with him on January 25th at the same office as before.

Q. Who else was present besides you and Mr. Collins?

A. No one else was present besides Mr. Collins and myself.

Q. What was said at that time by Mr. Collins and what was said by you?

A. We went over the cost factors of the contract on the vacation proposal. Mr. Collins stated he could only offer one week's vacation, the current vacation plan of the [663] company.

I told him the union would hold firm in its request for a two weeks' vacation plan.

After some discussion on that question, Mr. Collins stated that he would take that under advisement, to write a two weeks' vacation plan into the contract.

I then argued with him on the question of a general wage increase. Mr. Collins stated he felt they could give an increase approximating from 10 to 15 per cent over existing rates, that it would vary according to classifications.

I stated that the times called for a flat general wage increase, and that the union's position was for a 25-cent an hour increase, and we were not signing contracts at that time for less—up to that time for less than that. Although our position had

(Testimony of John Despol.)

been modified in the basis steel industry to 18½ cents that week. But that in his particular case we felt he should meet the full 25 cents per hour.

Mr. Collins said that that would throw them out of line with the rest of his competitors. We discussed the question of the so-called walkout of certain A.F.L. unions in the Pacific Northwest and the company's alleged inability to sell them in that territory, sell stoves in that territory.

Mr. Collins offered then to meet the wages paid by the Conley Can Company and the Boyle division of the United Steel Products Company.

I asked him would he agree to meet the general wage increase granted by those companies. He said no, the occupational rates.

I said we would give consideration to agreeing to a contract which would provide for a general wage increase that would amount to equal to that, that would be granted by those particular companies, although the wage negotiations of those two companies were still not yet settled. In fact, both those companies were involved in a strike, so-called national steel strike.

Q. Was anything else said at that time?

A. I again asked Mr. Collins for the written counter proposal and Mr. Collins said that he had not had one prepared. I don't recall the reason he gave at the time.

Q. Mr. Collins, did he ever submit a counter proposal to you?

(Testimony of John Despol.)

A. He has never submitted a written counter proposal to us. [665]

Q. Was anything else talked about at that time?

A. At the start of the meeting he said he was glad to see I had come alone.

I said I was glad to see he hadn't invited the A.F.L. Committee again, because I was not going to meet with him, in view of the fact we were discussing cost factors of the contract, wages and vacations.

Q. Did anything else transpire at that time?

A. Yes. Mr. Collins stated it was getting late and would I have a drink with him.

Q. Did you make a reply to that?

A. I said yes, I would be glad to have a drink with him. So we went over to Carl's Restaurant, located on Olympic and Soto, for the drink. I drove in my car and he drove over in his.

Q. Did you have a conversation there with Mr. Collins?

A. Yes. We sat down and ordered drinks, and we again discussed the question of executing the contract with United Steel Workers of America.

Mr. Collins said that the company would have to deal with the A.F.L. and would not be able to go along with our proposals.

We then discussed the various policies and growth of the A.F.L. and the C.I.O., and of the A.F.L.'s ability to enforce a boycott. [666]

I pointed out to him then that despite the so-called boycott that the company's sales had increased each

(Testimony of John Despol.)

year. The boycott did not seem likely to be harmful to the company.

Mr. Collins then suggested that the Steelworkers and myself, in particular, step out of the picture.

I asked him what he meant.

He says, well, if we should step out of the plant and let the A.F.L. and the company go ahead with an executed collective bargaining agreement——

I said that that couldn't be done.

Mr. Collins said, well, we could get nowhere, we had only 18 or 20 members in the plant at the most, and that there was just no place in the industry, stove industry or in that plant for the C.I.O.

I stated that we were the best judge of that.

Mr. Collins then said that he could make it worth my while by splitting his fee with me. That he earned a fee in handling this particular case, and that he could let me have \$1,000.00. That I could put on the show for the men and restrict our—by agreeing to another election, and that he was going to arrange for the contract to be signed by the Pioneer Electric Company and the A.F.L., and that the O'Keefe and Merritt Company was leasing its plant to the Pioneer Electric Company. And that the employees would be requested to work for the Pioneer Electric Company. [667]

I asked him was he not aware there had been similar cases before the National Labor Relations Board, where companies attempted to change names or to run out from under the certified bargaining agent.

(Testimony of John Despol.)

He said that he was not worried about this particular case, because that he and others had checked it from all angles.

I asked him what about the tax angle?

He said, "We checked from both the tax and price angle."

I said, "Perhaps you have the opinion you will have the advantage of a new company producing stoves and other heating equipment with the O.P.A., like the Kaiser-Fraser Company, a new automobile company, would have with the O.P.A. in setting its car prices."

He said he thought that would be true. He then repeated his offer of dividing his fee with me.

I told him that I wanted to think the matter over.

Q. Did anything further transpire then?

A. I discussed with him the economic power of the Steel Workers Union, the possibility we might shut off the steel supply from this particular plant, and also the possibility of economic pressure.

Mr. Collins indicated he was not worried about any action we might take. He said if necessary he would get his steel supply from Mexico. [668]

I told him that we had relations with the Mexican labor movement that might perhaps block that particular move.

This last bit of conversation was intermingled in the early part. We parted on the question of his repeating his offer and I stating I would think the matter over.

(Testimony of John Despol.)

Q. Did you thereafter meet with Mr. Collins again?

A. I met with him again on Friday, February 1st.

Q. How was that meeting arranged?

A. Mr. Collins had called our office and asked for either Mr. Conway or myself. I was ill that particular day, that was on Thursday — January 31st. I was ill with food poisoning.

Mr. Conway took the message. Mr. Conway informed me by telephone he had made a date to meet Mr. Collins at Perrino's or some other convenient place.

I told Mr. Conway over the telephone, who was not aware of the previous meeting, in view of his absence in Phoenix, Arizona, and his return at that particular day, that I did not want him to meet with Mr. Collins that day. To call Mr. Collins back and tell him we would phone him the following day for a meeting.

Q. Did you thereafter meet him?

A. The following day on Friday we phoned him and told him—told his office that we would meet at 4:00 o'clock at Carl's Restaurant. Mr. Collins' office stated that would be [669] satisfactory.

Q. Did you meet Mr. Collins at that time?

A. Mr. Conway and myself drove over to Carl's Restaurant and went in the restaurant. We did not see Mr. Collins and we went back and sat in Mr. Conway's car until Mr. Collins drove up a few minutes thereafter.

(Testimony of John Despol.)

Q. What did you do then when Mr. Collins came up, if anything?

A. Mr. Collins came up and we got out of the car and said hello to him, and we went into the restaurant. It was quite dark in the bar of this restaurant, cocktail bar. I selected a seat over near the corner of which I sat down in the middle of which Mr. Conway on my left and Mr. Collins on my right.

Q. Did you have discussion at that time and place? A. Yes, we did.

Q. State what was said who said it.

Mr. Collins: Just a moment. I move that this testimony about any offer of money to the union official be stricken on the ground it doesn't tend to prove or disprove anything at issue in the case. Surely, the officials are not going to contend taking the money they might have been above suspicion. I don't see where the unfair labor practice lies. If I had been offering it to their membership, to pull them off the job, or something like that, there might be some basis for this argument. [670]

Trial Examiner Kent: I will overrule the objection.

Mr. Garrett: I wonder if we might have some further foundation as to time, place and persons present.

Mr. Nicoson: Well, the witness has already stated it was 4:00 p.m., February 1, 1946, in Carl's Restaurant, cocktail lounge, at Soto and Olympic.

(Testimony of John Despol.)

Present were Conway, Despol and Collins. I don't know anything——

Mr. Garrett: May I have the witness on voir dire, your Honor?

Trial Examiner Kent: You may.

Mr. Garrett: Were there any other persons present and within hearing at this conversation whose names you know?

The Witness: Yes.

Mr. Garrett: Who were they?

The Witness: At this second meeting you are referring to now?

Mr. Garrett: I am talking about 4:00 p.m., February 1, 1946, at Carl's bar.

The Witness: Yes. Mr. Nethington, Mr. McCaskell.

Mr. Garrett: What was the first name?

The Witness: Nethington.

Mr. Garrett: What is his first name?

The Witness: Perry.

Mr. Garrett: Did you know Perry Nethington at the time this interview took place? [671]

Mr. Tyre: I object. That is improper voir dire. It is more properly cross-examination.

Trial Examiner Kent: What was the question?

(The question was read.)

Trial Examiner Kent: He may answer.

The Witness: Yes.

Mr. Garrett: Who was he?

The Witness: Mr. Nethington is an employee of one of the structural steel companies having a con-

(Testimony of John Despol.)

tract with our union, members of United Steelworkers of America.

Mr. Garrett: Do you recall the name of the company?

Mr. Despol: Yes.

Mr. Garrett: What is it?

The Witness: Pacific Iron and Steel Company.

Mr. Garrett: Is that Pacific Steel & Iron?

The Witness: Pacific Iron and Steel.

Mr. Garrett: Where was he seated, or was he seated?

The Witness: Mr. Nethington was seated on the booth to my right.

Mr. Garrett: Seated where?

The Witness: Seated in the booth to my right.

Mr. Garrett: Were you in a booth or at the bar?

The Witness: In a booth.

Mr. Garrett: All right. Now, you spoke about another person whom you knew who was present. What was his name? [672]

The Witness: Mr. McCaskell.

Mr. Garrett: What is his first name?

The Witness: Frank.

Mr. Garrett: Who is Frank McCaskell?

The Witness: He is the financial secretary of Local 2018 of United Steelworkers of America.

Mr. Garrett: Where was he seated?

The Witness: Mr. McCaskell was seated in the booth to my left.

Mr. Garrett: The booth to your left. Now, were

(Testimony of John Despol.)

there any other persons there present, if you know, whom you have not yet told me about?

The Witness: Yes, Mr. Leslie LaFrankie.

Mr. Garrett: And who is he?

The Witness: Mr. LaFrankie is an employee of a farm equipment company.

Mr. Garrett: What is the name of that farm equipment company?

The Witness: International Harvester.

Mr. Garrett: Is he likewise a member of the United Steelworkers?

The Witness: Yes.

Mr. Garrett: What local?

The Witness: Local 2018.

Mr. Garrett: Is Local 2018 the local involved in this [673] case?

The Witness: No, it is not.

Mr. Garrett: Did you say Mr. Nethington was a member of Local 2018?

The Witness: No.

Mr. Garrett: I didn't think so. [674]

Q. You did say he was a member of the C.I.O.?

A. I said he was a member of the United Steelworkers of America.

Q. Well, the United Steelworkers. What local does he belong to? A. Local 1981.

Q. Is that the local involved in this case?

A. Yes.

Q. What is the jurisdiction of Local 2018?

Mr. Nicoson: Objected to as improper voir dire.

Mr. Garrett: Withdraw it.

(Testimony of John Despol.)

Trial Examiner Kent: Sustain the objection.

Q. (By Mr. Garrett): Where was LeFrankie sitting?

A. Well, LeFrankie was sitting on my right.

Q. In the same booth with you or in another booth?

A. In the booth next to me.

Q. In the booth to your right?

A. That is right.

Q. Is he a member of the United Steelworkers?

A. Yes.

Q. What local? A. Local 2018.

Q. Is he an officer? A. Is he now? [675]

Q. Was he at that time an officer in that local?

A. Yes.

Q. What office does he hold?

A. He is president.

Q. Was Harry Nethington an officer of Local 1981, or merely a member?

A. He was an officer.

Q. What was his office?

A. I frankly don't know what his office was. He was a grievance committee man, I know that.

Q. All right. Now, was there anyone else present whom you have not yet named?

A. Yes, Mr. Robert Sutherland.

Q. Who is he?

A. He is an employee of the pump company.

Q. What is the name of it?

A. Pacific Pump Company, Pacific Pump Works, I believe it is called.

Q. Is he a member of one of the C.I.O. Unions?

(Testimony of John Despol.)

A. He is a member of Local 2018, United Steelworkers of America.

Q. Is he an officer?

A. He is not an officer of Local 2018.

Q. Is he an officer of any other C.I.O. Steelworkers local?

A. No, he is a grievance committee man in the plant but he is not an officer of the local. [676]

Q. Where was he sitting?

A. He was seated on my left.

Q. In the same booth with you or in the booth to your left? A. The booth to my left.

Q. All right. Now, were there any other persons present whom you have not yet named?

A. None that I personally know. The cocktail bar was about a third full when we first came in.

Q. Any other persons were unknown to you except Conway, who was with you?

A. Collins.

Q. And Collins.

A. And the four I have just named.

Q. And the four you have just named.

Mr. Nicoson: Is that all, Mr. Garrett?

Mr. Garrett: One more question.

Q. (By Mr. Garrett): Did the four people you have just named enter after you and Mr. Collins and Mr. Conway, or were they there when you and Mr. Collins and Mr. Conway entered?

A. They were there when we arrived.

Q. They were there when you and Mr. Conway arrived the first time? A. Yes: [677]

(Testimony of John Despol.)

Q. How high were the walls of these booths? Were they low enough so that you could see those around both to your right and left?

A. They are about the height of the edge here of the Examiner's box, just about even with my shoulder.

Q. What do you mean, would that be up to about where the box comes on the Examiner or where the box comes on you?

A. Where it comes on me. You could see their faces.

Q. You have your right arm resting on the box to the right of the witness box. Were the booths in Carl's Restaurant there about the same height so that you could rest your arm on them?

A. Perhaps a few inches higher. It was below the neck, put it that way.

Mr. Garrett: No further questions.

Q. (By Mr. Nicoson): Did those four persons you have just named to Mr. Garrett in addition to yourself, Mr. Conway, and Mr. Collins, engage in any conversation with you at that time and place?

A. No.

Q. Do you know how those four gentlemen happened to be there?

A. They were there at my request.

Q. Will you now state what was said by Mr. Collins, what was said by you, and what said by Mr. Conway?

A. At the start, when we first set down, Mr. Col-

(Testimony of John Despol.)

lins or [678] Mr. Conway, I don't recall which, started to order drinks, and I told them I was not drinking, my stomach was still upset, so one of them suggested milk and I ordered milk, which somewhat surprised the girl taking the orders.

Mr. Collins, as I recall, suggested I put rum in the milk, it would help settle my stomach, and I told him, no, I would just take the plain milk, because I had a rough day on Thursday. We then, I think, as I recall it, we may have discussed Mr. Conway's visit that week to Phoenix. I don't know if I discussed that with Mr. Conway just prior to that meeting, but that was part of my conversation with Mr. Conway. We also, I think, discussed the steel strike, and then Mr. Conway asked Mr. Collins about the contract with our union, and Mr. Collins repeated part of what he had said to me the previous week.

Q. What did he say?

A. He said that there was no place in the picture for the United Steelworkers, and that we should realize it and get out of the picture. He then related a story pertaining to an A.F.of L. business agent who, after long and faithful service, according to Mr. Collins, had been dumped on the scrap heap by his particular International after he was 60 years old or more, I don't recall the age Mr. Collins said, anyway, he was past his working life and he had no funds to show for it. He said we ought to look out for our personal [679] interests in these matters, particularly in the situation where

(Testimony of John Despol.)

there was no chance of the C.I.O. holding its interest in the matter. Mr. Collins then said that he would make it worth both our while, that he would let us have a thousand dollars.

Mr. Garrett: May I have that last sentence read, please?

(The record was read.)

Mr. Garrett: Thank you.

The Witness: Mr. Conway then asked, I asked him then how much would Mr. O'Keefe kick in, and Mr. Collins answered that by nodding his head in the negative. Mr. Conway then asked him how could we step out and still save face. Mr. Collins said, well, we could agree with the Pioneer Electric Company to an election, that they were taking over, that they had taken over that day, been announced at the plant, I understand, and simply cease organizational activities in the plant, and we could go down in the glory of defeat, and that we might file an unfair labor practice and confine our union activities solely to that question, filing an unfair labor practice. After Mr. Collins had answered Mr. Conway's question, I told him that it was no soap and I again stated what I said the week before, that while we certainly would file an unfair labor practice, we would also continue our organizational activities, exert economic pressure and continue to seek a contract. Mr. Collins said that he had known all about Mr. Spallino and Mr. Spallino's activities in the plant. [680] I gave no reply to Mr. Collins about that, but Mr. Conway asked Mr. Collins would Mr.

(Testimony of John Despol.)

Spallino be let go or would he be kept on the job, and Mr. Collins said as long as there was no strike participated in by any employee, that those employees would not be discharged. Mr. Conway asked if that went for Mr. Ortega, and Mr. Collins indicated by nodding his head in the affirmative that it also applied to Mr. Ortega. Mr. Conway then discussed the question of the A.F.of L. boycott, and related the circumstances of the Green Manufacturing Company, where a similar boycott had been threatened if they signed a contract with our organization, and Mr. Conway stated that that matter had been straightened out to the satisfaction of the A.F.of L. and the C.I.O. and the company, and we had not had any difficulty since then, with the exception of the problem of dividing the jurisdiction line between the Teamsters Union at the Green Manufacturing plant in South Gate and the bargaining unit relations between the Teamsters Union and ourselves were satisfactory. Mr. Collins said that he had met with the A.F.of L. officials that same week and that they had said that relations were not satisfactory between the C.I.O. and the A.F.of L. and that they were not going to withdraw the boycott. I told Mr. Collins that we would take up the question of the boycott and attempt to resolve it satisfactorily for everyone concerned after he had executed a contract with the United Steelworkers of America. [681]

Mr. Collins also stated that the salesman for the

(Testimony of John Despol.)

Pacific Northwest territory informed the management that he was unable to sell goods or at least get them installed because of the position of the American Federation in his particular territory. I then followed in reply to that that such matters might happen within the structure of the American Federation of Labor itself, and I cited what had occurred at the Payne Furnace Company. The Payne Furnace Company, as I related, stated at that time, had been under the jurisdiction of the Stove Mounters Union of the A.F.of L. when the Sheet Metal Workers of the A.F.of L. claimed jurisdiction and because of a boycott instituted by the Sheet Metal Workers Union the Payne Furnace Company's plant in South San Francisco or San Francisco Area had been forced to shut down because of the Sheet Metal Workers' boycott, and pointed out to Mr. Collins that the question of these so-called boycotts might occur right within the structure of the A.F.of L., that it would be no guarantee of his particular problem, and that if anything his company, I thought beyond question would be better off executing a contract with the certified bargaining agency, namely, the United Steel Workers of America, because I did not believe that either the A.F.of L. unions as a group or individually would attempt to institute a major boycott against our union [682] in view of the fact that we supplied them with steel on all of those other work projects, and that over 99 per cent of the steel production in America was produced by members of

(Testimony of John Despol.)

the United Steelworkers of America, that no union would enter into that kind of a boycott because of the strength of all the unions concerned; that Mr. O'Keefe and Mr. Collins had unnecessary fears in regard to this boycott, which did not hurt the increase of sales of this company in the 10 years that the boycott had been in effect.

We then discussed some other phases of the labor movement, local autonomy, international unions, and so on. Mr. Collins said well, he would let us have a thousand or fifteen hundred. He raised his offer to fifteen hundred.

Mr. Garrett: May I have that last sentence, please?

(Record read.)

Mr. Nicoson: Proceed.

The Witness: I told Mr. Collins that there was no soap, that we were going to stay in the company and continue our organizational activity and press the unfair labor practice and seek to sign a contract, and that I did not believe that his maneuver which he claims he told me he did take on that of in other words switching the major part of the production to the Pioneer Electric Company by release, as he stated, to the Pioneer Electric Company, would be successful.

Mr. Collins said that the only thing O'Keefe and Merritt [683] would be doing would be primarily sales and business activities directly related to the sales activity. I told Mr. Collins that the United Steelworkers of America might very well adopt a

(Testimony of John Despol.)

policy of shutting off the steel supply of his company, and repeated the statements I had made at the previous meeting.

Q. (By Mr. Nicoson): Was anything further said?

A. Well, we discussed the weather, I believe, and we discussed, oh, our personal personalities. For instance, Mr. Collins said this meant nothing to him, that it was simply a move of his for the company, it was his profession to get these matters settled for the company and settled in the easiest way for the least amount of difficulty to his client.

I told him I understood what motives actuated him, and that while I understood Mr. Collins he didn't understand me.

Q. Was there anything further said about unfair labor practice charges, that you recall?

A. Oh, yes, Mr. Collins when he made his offer for us to accept part of his legal fees and Mr. Conway had asked him how we can save face, he says we can take a day for a Labor Board case or a day and a half and let that go on its way. Mr. Conway said, Well, what will happen when the Board rules that you have committed an unfair labor practice and orders you to bargain collectively in good faith instead of upholding the A. F. of L. contract? Mr. Collins said that he was not worried about that, that he did not believe that if we would follow the policy he had suggested that there would be [684] any C.I.O. organization left in the plant by that time.

(Testimony of John Despol.)

Q. Is that all of the conversation that you recall at this time?

A. That is all I can recall. There was some other conversation, but it did not pertain directly to the issues between the Company and the Union, personal conversation. I don't recall it.

Q. Did you thereafter have a telephone conversation with Mr. Collins?

A. Yes, on the following Monday Mr. Collins called me and said that the offer was still open, and I told him that it was my reply that it was no soap.

Mr. Garrett: One moment please. May we have further foundation, the time and place and persons present, Mr. Nicoson?

Mr. Nicoson: All right.

Mr. Garrett: It was the following Monday?

The Witness: On the following Monday Mr. Collins called my office. That was Monday.

Q. (By Mr. Nicoson): Were you the only one on the telephone at your end?

A. Mr. Conway was on a double line in our office, listening in on the conversation.

Q. And you were about to fix the date I believe, were you not?

A. Yes, that was Monday, February 4, 1946.

Q. What did Mr. Collins say to you and what did you say to Mr. Collins?

A. Mr. Collins said that his offer was still open, and I told him that I had meant what I said at the previous meeting, that it was no soap, and that

(Testimony of, John Despol.)

we were going to prosecute our campaign to secure a signed contract, and asked him to sign a contract with the union. Mr. Collins said there was no point to signing the contract, because there were no employees. I said well, we will sign a contract anyway and let us determine later whether or not there are employees of O'Keefe & Merritt or Pioneer Electric Company. And that was about the gist of the conversation.

Q. And did Mr. Collins make any reply to that?

A. The only reply that I recall from Mr. Collins was his statement that there were no employees of O'Keefe and Merritt, therefore no point to signing a contract.

Q. Did you have any further contact with Mr. Collins relative to obtaining a contract for the United Steel Workers?

A. Mr. Collins had called our office and Mr. Conway was in Phoenix again. He asked for Mr. Conway, and would not speak with me. Our girl told him that I was present and I would be glad to talk with him, but he said no, he wanted to speak to Mr. Conway, according to my secretary's [686] statement. The only other conversation or meetings I have had with Mr. Collins have been since these hearings have occurred.

Mr. Nicoson: That is all. You may cross-examine.

Cross-Examination

By Mr. Collins:

Q. Mr. Despol, I wish to show you a——

(Testimony of John Despol.)

Mr. Garrett: I have no objection, your Honor.

Mr. Collins: I will ask you if you have ever seen this.

Mr. Nicoson: Just a minute, if I may be excused, please. I would like to offer Board's Exhibit No. 10 in evidence.

Mr. Garrett: That is the contract, is it?

Mr. Nicoson: Yes.

Mr. Garrett: Is that contract dated or was the original dated?

Mr. Nicoson: The contract that you presented to Mr. Collins that you testified about, was there any date on it?

The Witness: Yes, January 1st, 1946. This particular copy is not dated.

Mr. Collins: I have no objection to it being put into evidence on behalf of O'Keefe and Merritt. I do upon the usual grounds, as far as Pioneer is concerned, upon the ground that it does not tend to prove or disprove any issue as to them.

Trial Examiner Kent: It may be admitted.

The Witness: The copy that the Board is submitting, [687] the copy for the record, is not correct, if that date is blank, whereas the copy submitted to Mr. Collins we had typed in January 1st, 1946. We requested our wage increase to be retroactive to that time.

Mr. Nicoson: On the second line, was any name typed in there?

The Witness: Yes, the name of the company was

(Testimony of, John Despol.)

typed in there where the second line, which provides entered into between O'Keefe and Merritt Company, and the name of the company was filled in and the number of the local union on the first page.

Mr. Nicoson: What was it?

The Witness: Local 1981.

Mr. Nicoson: Local 1981 was in that blank space on the fifth line, is that correct?

The Witness: That is correct.

Mr. Nicoson: I now offer it.

Mr. Smith: Your Honor, may I have the same objection and the same ruling?

Trial Examiner Kent: The record may show the usual objection. It may be admitted.

(Thereupon, the document heretofore marked Board's Exhibit No. 10 for identification was received in evidence.)

[Board's Exhibit No. 10 set forth on pages 1665 to 1693.]

Mr. Garrett: We are going to object also—may the [688] ruling go out for the purpose of my objection? We are going to object also on the ground that it is incompetent, irrelevant and immaterial, not tending to prove or disprove any issues in this case, and point out that the contract by the foundation of this witness as can be shown by the record is shown to have been with an employer other than any with which these A.F.of L Unions have contractual obligations.

(Testimony of John Despol.)

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Despol, have you ever seen this particular handout before?

A. No, I have not seen it before. It appears to be one issued by the local union at my request.

Q. Was that one of those you had passed out to employees of the O'Keefe and Merritt Company?

A. I didn't pass it out. It was passed out by the local union having jurisdiction over Pioneer Electric and O'Keefe and Merritt.

Mr. Collins: I would like to offer that as Respondent's Exhibit next in order.

Mr. Garrett: May we see it?

Mr. Nicoson: Of course the record will show we have not had an opportunity to look at it yet.

Mr. Collins: I showed it to all of you during the last meeting here. [689]

Mr. Garrett: I missed seeing it.

Mr. Nicoson: Likewise I have never seen this document before.

Mr. Collins: As a matter of fact I have offered that once before, and it was ruled as inappropriate at that time.

Trial Examiner Kent: The witness at the time could not remember ever seeing it.

Mr. Collins: That is right. I offered it in evidence, tried to have it identified by Charles Spallino, and at that time I showed it to everyone.

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

(Testimony of, John Despol.)

Mr. Collins: I offer this as Respondent's Exhibit next in order.

Mr. Nicoson: I object.

Mr. Garrett: No objection.

Mr. Nicoson: Immaterial and irrelevant, nothing in there that can possibly bind the Board.

Mr. Collins: The only portion I am really concerned with, Mr. Trial Examiner, is the part with the red pencil around it.

The Witness: Which is not a statement of the Union's position.

Trial Examiner Kent: It may be received. I would suggest that that be marked as Respondent's Exhibit 3. [690]

(Thereupon, the document heretofore marked as Respondent's Exhibit No. 3 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 3

The Facts

Many employes at O'Keefe and Merritt are being confused [Notation—not Pioneer employees] by the recently announced changes in operational set-up of the Company and the effect of the Pioneer Electric Company on Union representation.

The National Labor Relations Board certification stands. Changes of ownership, name, method of operation can have no effect on this. You are still the same people who chose the CIO to represent you, you do the same work at the same place. No action of the owners can deprive you of belonging

(Testimony of John Despol.)

to the Union of your choice and being represented by that Union. The United States Supreme Court has repeatedly upheld these principles and it is the established law.

The purpose of the change in operation has nothing to do with your Union activities. It has been done to avoid tax payments and to get higher prices from the O.P.A.

We are not interested in what some company stooge or phony AFL union official tells you. The CIO is the certified bargaining agent at your plant and will remain so as long as the plant stands.

Already the CIO has been able to force the Company to give a wage increase. Although this increase followed President Truman's recommendation as accepted by the USA-CIO and is retroactive to January 1st, we are not accepting it as a final settlement of the wage issues at your plant. We are accepting it as part payment on the Steelworkers Wage Program.

For the benefit of employees who have hired out since the NLRB election, we wish to say that at a Government election, the CIO won by a vote of 177 to 114 for the AFL. Since that time the Company has tried to force the employees into a phony AFL Union called the Stovemounters. However, the employees, knowing their rights under the Federal law, are refusing to be intimidated and are flocking into the Union of their choice, the United Steelworkers of America, CIO. Do not let anyone tell you that you have to join the AFL at O'Keefe

(Testimony of John Despol.)

& Merritt. Your Union is the USA-CIO which is now negotiating a contract covering working conditions and wages.

In the near future a meeting of all O'Keefe & Merritt employes will be held to inform you of the progress of contract negotiations and the prospects for further wage increases.

You can help in these negotiations by joining your Union and supporting it. The initiation fee is \$3.00; the dues \$1.50 per month. Make your check or money order payable to Local 1981 USA-CIO and mail to Box 167, Maywood, Cal. If you are a veteran or have a transfer from another CIO Union remit only \$1.50.

Issued by O'Keefe Merritt Division Local 1981 USA-CIO, 4100 E. Slauson, Maywood, Cal. PO Box 167. Telephone LA 5211, JR 8111.

[Endorsed]: Filed March 18, 1946.

Mr. Nicoson: 3?

Trial Examiner Kent: You remember I called your attention the other day that you could hold those two until you were presenting your case. Mr. Collins apparently offered the reporter a letter and an affidavit in connection with his motion which were not marked, but submitted to the reporter, and the reporter the following day called my attention to the fact that they had been handed in and I suggested that——

Mr. Nicoson: I have never seen them.

(Testimony of John Despol.)

Trial Examiner Kent: No, they have not been offered yet. I suggested that in his own case he offer those, and then they can be ruled on as respondent's exhibits 1 and 2. The record will show I think some mention of those two pages. Therefore I will reserve the numbers 1 and 2 for those.

Mr. Collins: I note it is now five o'clock. Do you wish to adjourn?

Trial Examiner Kent: Yes. I think gentlemen, we are riding along rather slowly here. I will have to request that we commence at 9:30. I won't upset that rule of twelve to two, in order to give counsel a certain [691] amount of time for conferences at noon but we will convene at 9:30 in the morning, otherwise I may put myself in a position where I will sort of hurry the other side and I will be accused of being unfair.

(Whereupon, at 5:00 o'clock p.m., March 18, 1946, the hearing was adjourned until 9:30 a.m., March 19, 1946.) [692]

Tuesday, March 19, 1946

9:40 o'Clock A.M.

Trial Examiner Kent: All right, Mr. Despol, you may take the stand.

JOHN DESPOL,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Collins:

Q. Mr. Despol, I believe that you testified that I offered to split my fee with you. Wasn't it, as a matter of fact, that I offered to put it on the expense account?

A. As I recall your first meeting, you talked about earning a fee and that the longer this case went on the more fee you earned.

You also referred to your expense account.

Q. You don't remember whether it was the fee or the expense account, is that the idea? Is that the substance of your testimony?

A. It was one or the other.

Q. One or the other. O.K. If I told you I was on a monthly salary, would that seem to refresh your memory any? A. No.

Q. Mr. Despol, referring to the agreement, Board's Exhibit 10, the purported contract that you offered us, I show you [697] the Section 1 under Recognition. Didn't I agree with you that we would accept Section A? Section B, with some modifica-

(Testimony of John Despol.)

tion in the terminology? You had better answer yes as we go along here, yes or no. A intact?

A. A intact, yes.

Q. B with some change in the terminology.

A. I have to see my notes on B. I don't recall.

If you will let me have the other contract I have my notes on there. No, that one is marked pass.

Q. What do you mean by pass?

A. Well, you didn't——

Q. I think you put it on there——

A. Instead of reject.

Q. Pass that for the time being. So, we will mark this pass. I am going to put pass on here B, pass.

Now, new employees.

A. That you tentatively accepted.

Q. On union security, didn't I tell you there that we would not accept that provision but we would grant maintenance of membership with the 15 escape clause? A. That is correct.

Q. And checkoff, I agreed to, Section 4?

A. That is correct.

Q. And Section whatever it is, it is entitled Hours of Work on this, but it does not seem to be numbered. Hours of Work, [698] didn't I agree to that?

A. No, you did not. You passed that particular section and later stated that you would pay time and a half after 40 and time and a half after 8, your current practice.

(Testimony of John Despol.)

Q. What was the disagreement, if any, after we got through with that?

A. There was a question of call-in pay and there was the question of time after Saturday and double time for Sunday, which was not included in the written proposal, although it was included in your verbal statement.

Q. There are seven sections in this Hours of Work, isn't that true? A. Yes.

Q. Did I agree to A?

A. You did not agree to any of this language. What you did was verbally say you would pay time and a half after 40 and time and a half after 8, and you submitted a written statement to that effect, and you did verbally indicate that the call-in pay would be tentatively O.K.

Q. What was the actual difference between us on that section on Hours of Work? What was the actual difference, if any?

A. Part was a matter of language and part was the question of paying time and a half for Saturday as such, and double time for Sunday as such, and having a written call-in pay [699] proposal.

Q. Well, all this language was accepted, or some of it, wasn't it?

A. Not this particular language. You had your own language.

Q. I mean part of it was acceptable?

A. That pertained to the 40 hour week and the 8-hour day.

(Testimony of John Despol.)

Q. Very well. On the subject of continuation of wage rates, A was agreeable, was it not?

A. That is correct.

Q. And B was O.K.? A. That is correct.

Q. And new wage rates for new jobs, that was O.K., was it not? A. That is correct.

Q. And new wage rates for changed jobs was O.K.? A. That is correct.

Q. Now, I note this is wages continued here.

A. That is the same thing as that.

Q. In other words, we agreed to all of that?

A. You should know.

Q. Well, I mean this is going in the record, and I want to ask you. The section on wages, in the part which is entitled Wages, being 25-cent an hour increase, that I did not agree to.

A. That is correct. [700]

Q. And I did tell you I would pay the going rate in the stove industry?

A. That is correct.

Q. And that we would not take away from the employees any of the benefits that they were now securing without any union contract, isn't that so?

A. That is correct, but you refused to put that in writing.

Q. You mean I refused to put it into the contract. A. That is correct.

Q. Didn't I tell you that if you accepted the wage proposal that I was offering you, that it would be 20 per cent higher than the current wage in the stove industry?

(Testimony of John Despol.)

A. You said it would be higher than the local stove industry. As to the exact amount, I don't recall.

Q. Didn't I tell you that O'Keefe and Merritt had a pension fund which amounted to 15 per cent of the annual wage of the employee?

A. Or words to that effect.

Q. That was a contract that was in writing between the employees and the company, was it not?

A. Yes, but not between the union and the company.

Q. Very well. That would be 15 per cent of their annual wage, isn't that so?

A. I don't know. That is what you stated.

Q. Didn't I tell you that? [701]

A. That is what you said.

Q. Did I also tell you that we had a Christmas bonus of two weeks for those who were there less than five years, and for three weeks for those who were there over five years?

A. That is correct.

Q. I told you we would not take that away?

A. Yes. But you specifically requested that a clause be in the contract stating that the Christmas bonus was not subject to the contract.

Q. Well, didn't I tell you that again was a thing that was paid out of profits, that if there weren't any profits there wouldn't be any Christmas bonus? If there was, there would be?

A. That is right.

Q. A Christmas bonus of three weeks' pay, plus

(Testimony of John Despol.)

15 per cent of their annual pay, that is over 15 per cent of their total wage, is it not?

A. Under your figures it would be.

Q. If I offered you the current going rate in the stove industry, plus that, it would be, in effect, the going rate, plus 15 per cent?

A. You never offered the wage scale, you simply offered the principal of the going rate.

Q. I told you I would pay what Gaffers & Sattler were paying? [702]

A. That is correct, but the wage scale was never submitted.

Q. Didn't I tell you I would pay the same as the Western Stove was paying?

A. Yes, but the wage scale was never submitted.

Q. Didn't I tell you we would even pay the wage of Wedgewood Company, who were manufacturing stoves in San Francisco?

A. That is correct, but you never submitted a wage scale.

Q. That is a matter that you, as a representative of your union, could easily ascertain?

A. We asked for a written proposal. Our proposal was for a general increase of 25 cents an hour.

Q. Isn't it something that was easily obtainable by you, as a representative of your union?

A. All the plants you mentioned are A.F.L. plants. Whether we could obtain wage scales from those plants is questionable.

Q. You didn't try to get one?

(Testimony of John Despol.)

A. I asked you for it. You had it in your hand, and you were going to permit me to type the wage rates of Gaffers & Sattler contract. You handed it to me, and on second thought you said, "I will type it for you." You didn't furnish me a copy of the alleged contract of Gaffers & Sattler.

Q. You didn't have any doubt about getting the thing; did you?

A. I never received it. I requested it. [703]

Q. Just answer my question. You didn't have any doubt you couldn't get it?

A. I have doubts now, in the event it has been a good many weeks since I requested that.

Q. Do you still want it? A. Yes.

Q. That would be in the nature of continuing our negotiations; would it not?

My Tyre: I object to that; it is incompetent and irrelevant.

Mr. Collins: I am asking the witness. I am asking the witness does he wish to continue our negotiations.

Mr. Tyre: I have the objection on the record.

Trial Examiner Kent: Yes. He may answer.

Mr. Collins: I will withdraw the question. I will ask this witness:

Q. (By Mr. Collins): Do you wish to continue negotiations along those lines?

Mr. Tyre: I will object to that on the same grounds.

Trial Examiner Kent: He may answer.

The Witness: Along what lines?

(Testimony of John Despol.)

Q. (By Mr. Collins): Along the lines of bargaining, with the rates the rest of the stove industry are paying, permitting O'Keefe and Merritt to pay over 20 per cent more than the rest. [704]

A. Prior to the execution of the contract the unfair labor practices of the company——

Q. Just a moment. Answer my question. Let's don't deliver a speech.

A. I am answering your question.

Q. Do you want to continue negotiations or don't you? Yes or no.

A. It requires a statement of the——

Mr. Tyre: I am going to object to this line of examination. The place for negotiations is not at the Labor Board hearings. We are now charging, through the Labor Board, this company has committed unfair labor practices, among which are the refusal to bargain. I don't think it is a question of whether the company is trying to bargain with Mr. Despol on the witness stand. The question is whether or not heretofore the company has committed the unfair labor practice of refusing to bargain with the United Steelworkers of America. The questions that are being asked now are incompetent, irrelevant and immaterial.

Mr. Collins: Is it the position of counsel of the Board that the C.I.O. does not desire to bargain now?

Mr. Tyre: I have my objection on the record, Mr. Examiner. I wish there would be a ruling on it and let this testimony go on.

(Testimony of John Despol.)

Trial Examiner Kent: I will sustain the objection. I [705] think counsel may offer to reopen and resume bargaining, however.

Q. (By Mr. Collins): Now then, getting down to the section here concerning night shift bonus. Did I agree to pay a night shift bonus?

A. You agreed to maintain the present night shift bonus, but you did not agree to our proposal for 10 cents an hour for the second shift and 15 cents an hour for the third shift.

Q. Did I not tell you I would pay 5 and 10 or 7 and 10?

A. 5 and 10; that is your current practice. No change.

Q. So I did offer you 5 and 10 cents night shift differential?

A. You offered to maintain the current night shift bonus.

Q. That is 5 cents and 10 cents; is that correct?

A. That is correct. 5 cents and 10 per cent.

Q. The section on holidays, did I offer to accept any of these holidays?

A. You did not agree to our proposal to pay double time for any of the six holidays set forth in the agreement, but you did state that you would pay time and a half for a holiday worked.

Q. If they didn't work, they didn't get anything? A. That is correct.

Q. With what exception? Didn't I agree that some of them were paid holidays?

A. Not to my recollection. [706]

(Testimony of John Despol.)

Q. You don't recall any of them? A. No.

Q. You wouldn't say I didn't offer to pay some of them?

A. Yes, I would. The only notes I have of it is that you would pay for holiday work, but you wouldn't pay time and a half for all holiday work.

Q. On the section of seniority, I agreed to that; didn't I?

A. Yes, with the exception of Paragraph F.

Q. That means, giving the union officers a greater seniority than anybody else merely because they were officers? I excepted to that; is that right?

A. That is correct.

Q. With that exception, I agreed with the other eight provisions; is that true?

A. You tentatively agreed to them.

Q. Now, on the question of vacations, did we have any agreement at all, or did I make you any proposition on the question of vacations?

A. The only agreement we had on vacations was Paragraphs F and G. The rest is still an open question. You were to submit a written proposal, but you never did.

Q. But I did indicate there could be some agreement reached on vacation?

A. You indicated you would submit a written proposal. [707]

Q. The question on grievance machinery, didn't I agree to that grievance procedure? A. Yes.

Q. I believe there was one change made in that you accepted and I accepted, both. I think we

(Testimony of John Despol.)

agreed to have, instead of having Department of Labor settle our grievances, we agreed to Conciliation Service, or something of that kind.

A. Well, the Department of Labor and Conciliation Service are the same government agency.

Q. I know, but didn't I agree instead of having the Department of Labor as the final arbitrator of the disputes, didn't I suggest to you we have the American Arbitration Society in their place instead, and wasn't that agreeable with you?

A. I don't particularly recall that. If your recollection is better than mine—we have in other cases accepted the American Arbitration Association, if that is your question.

Q. That would have been agreeable with you?

A. That is correct.

Q. Grievance record, I agreed to that; did I not?

A. That is correct.

Q. Discharge cases, I agreed to that method of—

A. You had one modification.

Q. What was that?

A. That was stated yesterday. You fixed a time limit on the retroactivity of any employee receiving back pay for an unfair discharge. [708]

Q. You agreed to that, did you not?

A. Yes.

Q. Did we not agree on discharge cases?

A. Yes.

Q. Recall to employment, we agreed to that?

A. Yes.

Q. Benefits and privileges?

(Testimony of John Despol.)

A. You did not agree to that. That is where you wanted the exception on the Christmas bonus plan.

Q. With that exception I agreed to it?

A. Yes.

Q. In other words, I wanted to have some phraseology to the effect that the Christmas bonus would have to be paid out of profits?

A. No, you didn't want the union to have anything to say on the question of the Christmas bonus plan or any voice in that question.

Q. The question on leave of absence, did I agree to that?

A. Yes, except that on the question of leave for union officers and delegates you modified that for a period of not to exceed two weeks.

Q. Did you agree to that? A. Yes.

Q. So we were in agreement on leave of absence? A. Tentative agreement. [709]

Q. Veterans, I believe I told you that was referred to the O'Keefe and Merritt post of the American Legion, did I not.

A. That is what you stated.

Q. Didn't I also tell you that the O'Keefe and Merritt post of the American Legion met in the Five and Over Club room, held their meetings and took care of all matters between the returning veterans and the company and many other matters, of course, that pertained purely to veteran activities?

A. You so stated.

Q. Didn't I tell you that I discussed the matter

(Testimony of John Despol.)

with two of the leaders of the O'Keefe and Merritt post of the American Legion and they said they did not want the union to handle that for them, they wanted to handle that for themselves?

A. I said we were not handling their affairs for them. I said we simply wanted provisions in the contract to protect the returning veterans.

Q. I didn't ask you what you said. I asked you what I said.

A. That is correct.

Q. How about the veterans' committee down here, or is that part of the subject of veterans?

A. That was part of the subject of veterans. That is the committee that implements the previous section.

Q. Did I also tell you in connection with these veterans that there was a G.I. Bill of Rights that took care of [710] veterans' affairs, irrespective of the union contract, and you told me yes, but there were some other matters that you took care of that were other than the G. I. Bill of Rights?

A. I went even further than that and I said we wanted to have the G. I. Bill of Rights and the privileges incorporated in the agreement, so that the veterans could settle those questions without having to resort to the courts.

Q. I told you the American Legion Post at O'Keefe and Merritt were going to handle those matters pertaining to veterans?

A. Yes, you said the union had nothing to do with that.

(Testimony of John Despol.)

Q. The question of military leave we agreed to?

A. Yes.

Q. Group insurance, I said we would agree to that but we already had in effect one that was better?

A. You stated that you would not incorporate any insurance clause in the contract.

Q. Didn't I tell you I would not take away from them any of the benefits they now had, on this group insurance?

A. Yes, and when I asked you if you would put that statement in the contract, that you would not take them away, you said no.

Q. Well, isn't there a provision in this contract itself some place which says we do not take away any benefits that the employees now have, that is, benefits and privileges? [711]

A. It can be so interpreted, but when I asked for a specific interpretation of the group insurance benefits now existing, your answer was that it could not be included in the contract.

Q. Did I or did I not tell you that we now had group insurance in effect that was better than that which you were asking for?

A. You said parts were better, parts were worse.

Q. Very well. Now, the question of safety and health, I believe I told you that was agreeable except we would not agree to exceed the requirements of the state law?

A. That is correct.

Q. And didn't you agree to that?

A. That is correct.

(Testimony of John Despol.)

Q. On the miscellaneous provisions, I agreed to them, the bulletin board and so on, isn't that true?

A. That is correct, you agreed to everything that didn't cost you any money.

Q. And contracting work in the plant, I agreed to that, did I not? Well, everything in the miscellaneous provisions we agreed to, as I recall. I believe that is your testimony.

A. I think that is correct.

Q. Sick leave?

A. You did not agree to it. It cost you money.

Q. Well, I had a further reason, didn't I state that anybody [712] who had a week's sick leave coming would be absolutely insane if he did not take it under one device or another?

A. I said we would put reasonable limitations on the question so that the question of abuse would be handled jointly through the management and the union.

Q. In our bargaining didn't I say to you that was the same as an extra week's vacation?

A. You so interpreted it and I stated we could put reasonable terms on it to prevent that situation occurring, as we have done in other situations.

Q. And I agreed to this hours of work continued in here, did I not?

A. Yes, you agreed to the no strike clause in the contract.

Q. Very well. Maintaining the bargaining relation, I agreed to that, did I not? A. Yes.

(Testimony of John Despol.)

Q. And I told you in addition to that I would like to put in the shop rules, and I told you in that connection, did I not, that I would take those shop rules from several standard C.I.O. contracts which I had negotiated and which had already been accepted by several C.I.O. unions; isn't that true?

A. Well, that is only partly what you stated. I asked you to submit them and we would then consider whether or not they were acceptable, and you have yet to submit those shop rules.

Q. Be that as it may, did I not tell you that I would take [713] the shop rules and standard practices and so on out of currently operating C.I.O. contracts?

A. You said you would take them out of currently operating contracts. Whether or not there is any such thing as a standard practice or shop rule, I wouldn't know.

Q. Did I say that, that is what I am asking you.

A. Yes.

Q. Not whether that is correct, that is what I said.

A. Yes.

Mr. Collins: I offer to stipulate at this time that we will now enter into an agreement with the C.I.O. Steelworkers Local, enter into a contract upon the basis of the matters that Mr. Despol has just testified were acceptable to him and as to the one disputed clause about maintenance of membership and union security and so on, I offer to stipulate that we will now enter into a contract granting union

(Testimony of John Despol.)

maintenance and omitting the clause for the escape clause.

The Witness: Mr. Collins, we are in dispute on every cost factor in the contract, wages, pension, et cetera.

Mr. Nicoson: For reasons already stated, I can't stipulate to that.

Trial Examiner Kent: That is offered, of course, on behalf of O'Keefe and Merritt?

Mr. Collins: Yes.

Trial Examiner Kent: Not on behalf of Pioneer Electric? [714]

Mr. Collins: That is right.

Trial Examiner Kent: The record may so show.

Q. (By Mr. Collins): Mr. Despol, did you at any time state to me or to any of the employees of either the O'Keefe and Merritt Company or the Pioneer Electric Company, that you did not want the Teamsters in your union?

A. I said we generally excluded the truck drivers from our bargaining units.

Q. Mr. Despol, just answer my question yes or no, if you can, then explain your answer later. I want to know now, did you or did you not say to me that you did not want the Teamsters?

A. I said we generally excluded the Teamsters from our collective bargaining contracts, bargaining units.

Q. I will ask you then, do you want the Teamsters in your unit at this time?

(Testimony of John Despol.)

A. Are you referring to as far as O'Keefe and Merritt is concerned or Pioneer Electric?

Q. Either O'Keefe and Merritt or Pioneer Electric.

A. We are the certified bargaining representative for them, and as such must bargain for them and have bargained for them.

Q. Is it your statement now that you do want the Teamsters?

Mr. Tyre: I will object to that. I don't think it is relevant to this hearing, in which the record shows that the United Steelworkers of America have been certified as exclusive [715] bargaining agents for certain named groups of employees, which includes the teamsters, warehousemen, and shipping department employees. It is our contention that the certification is carried over into the Pioneer Electric Company. I think the question of whether or not the Teamsters are to be excluded from the bargaining unit, having been once included, is a matter perhaps for the Board to determine and perhaps of negotiation, not for this court at this time to determine by a question from this witness.

Trial Examiner Kent: Well, there is a possibility that there may be some ambiguity. The unit as alleged in the complaint is for production and maintenance employees, primarily, and then there are certain exclusions. The exclusions do not list the teamsters. I don't think there would be any harm in taking any testimony pertaining to any

(Testimony of John Despol.)

conversations by and between the parties at the time.

Mr. Tyre: I agree, your Honor, that there is no harm in it, but I don't see any good to be gained by it.

Trial Examiner Kent: I think it may very well be included in the record.

Mr. Tyre: If this question now is addressed to the union's present position, I don't think it is relevant. If he is directing this testimony to clear up what was intended by the certification and what was intended by the consent agreement for election—but the question now of the union's [716] present position will have no bearing upon the determining of the particular question. That is why I am objecting to this question.

Trial Examiner Kent: Read the last two questions.

(Record read.)

Trial Examiner Kent: Will you amplify your answer?

Mr. Reed: Mr. Examiner, before he answers that question, in the absence of counsel for the Teamsters I would like to enter an objection on their behalf as to the company apparently making such an offer or indicating the possibility of such an offer on behalf of the Pioneer Company, and the Teamsters should not be bound by the question or that line of testimony.

Trial Examiner Kent: Well, of course the Teamsters are obviously not bound by testimony that this

(Testimony of John Despol.)

witness may give. The Teamsters have a right to participate and put in their own case.

Mr. Tyre: I believe there is an objection now on my behalf.

Trial Examiner Kent: I think the inquiry may be proper. You can proceed.

Q. (By Mr. Collins): Will you answer the question, Mr. Despol?

A. The position of the United Steelworkers of America for O'Keefe and Merritt and Pioneer Electric is that the union [717] will bargain for all of the employees it was certified for. Prior to the consent election the union had requested the truck drivers to be excluded.

Mr. Collins: I move that answer be stricken upon the ground it is not responsive to my question.

Q. (By Mr. Collins): I will ask you again, did you or did you not ever say to anyone that you did not care to bargain for the Teamsters?

A. What I said on many occasions that it is the practice of our union——

Q. Just answer my question.

Trial Examiner Kent: I think his answer might generally be responsive. He may proceed to answer. You may answer.

The Witness: What I said to Mr. Collins and to others, it has been the practice of the United Steelworkers of America to exclude truck drivers from the bargaining unit.

Q. (By Mr. Collins): Did you ever tell Mr. Bai of the Metal Trades Council or Central Labor

(Testimony of John Despol.)

Council or whatever it is he is the head of, that you would exclude all of the employees for the purpose of collective bargaining except the Stove Mounters?

Mr. Nicoson: Just a moment. I am not objecting, but I want to get that name.

Mr. Collins: B-a-i, as near as I can understand it.

The Witness: I did not. I said to Mr. Bai that in [718] respect to those crafts in the plant, that had the matter gone to a globe type election they might possibly have won in a craft unit, and that we would stand open to take up the problems of their jurisdiction for those particular crafts.

Q. (By Mr. Collins): Did you ever tell me that the only kind of deal you would make with me would be where you could exclude everybody except the Stove Mounters?

Mr. Tyre: Mr. Examiner, I am going to object to this question. The agreement for the consent election is now in the record, and pursuant to that agreement an election was held and certification issued. Lots of things are stated in the course of compromises, in the course of reaching an agreement and in negotiating for the agreement. It is a well known rule of evidence, your Honor, which ought to be followed here, that what precedes an agreement which is finally reduced to writing ought not to be permitted in evidence at this time or any time, except insofar as that evidence may be neces-

(Testimony of John Despol.)

sary to clear up ambiguities in the agreement, that is, if there are any ambiguities. I think your Honor has already expressed his opinion that there are no ambiguities, except possibly for the Teamsters. I think therefore the question should not be allowed.

Trial Examiner Kent: Just what was intended by the use of the term production and maintenance employees?

Mr. Tyre: Let him ask that question then, your Honor. [719] I don't think it is relevant. It would simply amount to a statement as to one of the proposals of this witness. Let him ask that question as to what was meant by production and maintenance employees.

Mr. Schullman: Your Honor, may I participate in this objection vigorously. I think your Honor did permit matters that occurred prior to the certification on direct examination, and I think matters prior to the certification are important, especially as far as Local 792 is concerned, because we have contended up to the present time and are continuing as far as we are concerned we are not part of the certification, therefore any testimony which is being elicited which would show whether or not those men that are contemplated in the consent election case by maintenance and production, or any ambiguity, is permissible. I therefore urge that the counsel be permitted to cross-examine on that situation of the testimony.

Mr. Nicoson: I would like to say at this point that the Board intends to prove before it finishes

(Testimony of, John Despol.)

its case that all these parties that it is now arguing about were present at one time or another, they knew everything that was going on or occurring down into the conduct of the election on the basis of the unit as alleged in the complaint, and when I get around to it, the consent election agreement will show and the rest of the evidence will also show that the parties [720] agreed to the unit in advance, and upon that basis and upon the agreement of all the parties the Board went out and held an election in that particular unit, and as the result the Regional Director certified the result to all the parties.

Mr. Schullman: If the court please, since that is a statement of what the testimony will show, I will state the testimony will not and cannot show that Local 792 or anybody authorized by Local 792 participated in the consent or any of the matters pertaining to the consent.

Mr. Nicoson: Well, for Mr. Schullman's information, since he was not here, there is the evidence in the record now that at a meeting in Mr. Collins' office that he stated at that time that the Painters were involved.

Mr. Schullman: I think, your Honor, that was testimony made by Mr. Spallino, and I think I made a motion to strike all his testimony. I think that anything that he or anybody else might have said or could say without such authority is meaningless, and the fact that somebody said they would

(Testimony of John Despol.)

bind the Painters does not mean that they had any such authority.

Mr. Nicoson: It was brought out by a leading question on cross-examination by Mr. Collins that the Painters were there and that the men stated they were involved and were represented.

Mr. Schullman: There is no such testimony in the record, I am told by counsel. [721]

Mr. Nicoson: I think the record speaks for itself.

Mr. Tyre: By counsel you mean Mr. Garrett, is that right?

Mr. Schullman: I think that is evident.

Mr. Tyre: You didn't refer to me, Mr. Schullman. I think you referred to Mr. Garrett.

Mr. Nicoson: The record shows what it shows.

Mr. Collins: Mr. Examiner, this is costing us a dollar and a half a page for this objection. I wonder if we can't get on here.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: A very interesting objection is going on here, but I wonder if we can possibly get on.

(Question read.)

The Witness: I told Mr. Collins——

Mr. Tyre: Just a minute.

Trial Examiner Kent: He may answer.

The Witness: I told Mr. Collins that our contract was for the bargaining unit certified by the National Labor Relations Board. As a result of

(Testimony of John Despol.)

the consent election we were willing to sit down and talk out the questions of jurisdiction and the equities of the A.F.L. craft unions concerned.

Q. (By Mr. Collins): Don't you remember——

A. It would be useless to sit down and talk with the Stove Mounters Union. [722]

Q. Didn't you tell me, Mr. Despol, in words as follows, or this general tenor, that "I will sign a contract with you for the Stove Mounters and let the A.F.L. have all the rest"? Didn't you make me that direct offer?

Mr. Tyre: I will object to that until such a time as Mr. Collins determines the time of that statement or the time of the question.

Mr. Collins: This is cross-examination, Mr. Trial Examiner. If I wanted to impeach the testimony of this witness, I could.

Trial Examiner Kent: He may answer. Proceed.

Mr. Tyre: I object to the question generally on the ground it is irrelevant and immaterial.

Trial Examiner Kent: He may answer.

The Witness: My answer to that question is the same as the one before.

Q. (By Mr. Collins): Did you ever tell Mr. McMurray that you would exclude his Machinists from the unit? A. Definitely not.

Q. Did you ever tell Mr. Lazzerini you would exclude his Moulders from the unit?

A. Definitely not.

(Testimony of John Despol.)

Q. Did you ever tell Mr. Cordil of the Carpenters that you would exclude his unit?

Mr. Garrett: May I have that question read?

(The question was read.)

Mr. Tyre: May I have it understood I have a continuing objection to this entire line of testimony, of all conversations pertaining to the bargaining unit prior to the consent agreement and after the consent agreement?

Trial Examiner Kent: The record may so show. The objection may go to the entire line.

The Witness: I don't recall the particulars of conversations with Mr. Cordil.

Q. (By Mr. Collins): Now, Mr. Despol, isn't it a fact that you told various heads of the various A.F.L. locals that if they would let you have the Stove Mounters you would let them have their particular crafts?

A. I asked Mr. Bassett of the A.F.L. Central Labor Council to arrange a meeting whereby we could discuss those questions that had been raised in this situation. Mr. Bassett arranged it for 2:00 o'clock on the Monday afternoon.

Q. Didn't you there at that——

Mr. Tyre: One moment.

The Witness: And prior to that, just prior to 2:00 o'clock Mr. Bassett's office called and said the meeting had been cancelled.

Mr. Garrett: May I have the last two questions and answers read?

(The record was read.) [724]

(Testimony of John Despol.)

The Witness: I do recall one particular aspect of the conversation with Mr. Cordil. We were down at the plant one morning and we were discussing the situation, and I told him then that if his organization had requested a separate unit at the time of the consent election that we probably would have consented to a separate unit at that particular time, in order to secure a consent election.

Q. (By Mr. Collins): This took place after the consent election, did it? That is, this conversation you are now referring to? A. Yes.

Q. All these conversations with the A.F.L. various representatives, such as Mr. Bassett of the Central Labor Council, occurred after the election; did they not? A. Yes.

Q. Did you tell Mr. Bassett of the Central Labor Council what your purpose in having the meeting was?

A. Yes. I told him we wanted to discuss the questions of jurisdiction and the question of the boycott and so-called unfair list of the company, and the entire situation of Pioneer Electric and O'Keefe and Merritt.

Q. Were you going to attempt to get him to take O'Keefe and Merritt off the unfair list if he signed a contract?

A. We were going to discuss that question.

Q. Were you also going to attempt to get into agreement by [725] virtue of the fact you were going to let the A.F.L. have certain locals exempted from your jurisdiction?

(Testimony of John Despol.)

Mr. Tyre: I object to that as being not relevant or material. It calls for a conclusion. It doesn't bear in any way upon the issues before the Examiner at this time.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: It may be taken.

The Witness: I don't understand the question.

(The question was read.)

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins) Were you going to try to make a deal with Mr. Bassett whereby you were going to let him have certain A.F.L. locals upon the condition you get a contract from O'Keefe and Merritt and get them off the unfair list, get O'Keefe and Merritt off the unfair list, and you give him some of the locals; isn't that true?

A. I don't understand what you mean by my giving them any locals. I don't have any locals to give them.

Q. Were you going to let the American Federation of Labor represent the locals they claimed?

A. Your answer to the previous question is no.

Q. The answer is no?

A. To the previous question.

Q. What were you going to talk to him about if you had the [726] conversation?

A. I stated what we were going to discuss with him was the questions involving the O'Keefe and Merritt plant.

Q. What were these questions you were going

(Testimony of John Despol.)

to discuss with him? That is what I want to know.

A. We never got to discuss them, so it is hard to determine what those questions would have been. We were seeking to determine what the attitude of each individual A.F.L. union in claiming jurisdiction in the plant was. We never got to that point.

Q. Mr. Despol, instead of talking in such large terms and generalities, let's get down to cases. What were you going to offer the man when you got there?

Mr. Tyre: I object to that. It has been asked and answered. I don't think it is material, anyway.

Trial Examiner Kent: I will sustain the objection.

Mr. Tyre: I don't see how he can answer it. How does he know?

Mr. Collins: He must have had some reason for going there. It wasn't to have a social call.

Mr. Reed: The proper answer would probably be not any more than you had to.

Q. (By Mr. Collins): Would that have been your answer?

A. Mr. Reed can speak for the Machinists. He is not authorized to speak for the United Steelworkers of America. [727]

Q. (By Mr. Collins): Referring to this first meeting that you had with me in my office at the O'Keefe and Merritt Company, didn't I at that time ask you to bring a bargaining committee with you? I mean a committee of employees?

A. At what time was this?

(Testimony of John Despol.)

Q. The first meeting you had with me at the O'Keefe and Merritt factory in my office.

A. I don't recall the first meeting. The first or second or third meeting you raised that question.

Q. I asked you to bring your own committee and come up?

A. That is true. And I stated we would determine when it was safe to bring a committee in your office.

Q. Were you afraid I was going to beat them up or hurt them, or something? What do you mean "safe"?

A. Because of the discriminatory practices of the management. We had determined it would be unwise to bring any employee of the company in on a committee at this particular time. We did state we might bring them all in at some future date; we still may.

Q. You won't deny it? You simply don't remember my asking you to bring them with you at this first meeting?

Mr. Tyre: I object. It has been asked and answered.

Trial Examiner Kent: He may answer.

The Witness: One of the first couple of meetings.

Q. (By Mr. Collins): You won't say no, I didn't say it the [728] first time; would you?

A. No, I wouldn't.

Q. Didn't I also tell you at the very first meet-

(Testimony of John Despol.)

ing it was contemplated some other company might take over the manufacture of our gas ranges when we got into production out there?

A. The first meeting?

Q. Yes. A. Definitely not.

Q. You don't remember me saying that at the first meeting?

A. I am sure you did not say it.

Q. Didn't I tell you that again at the second meeting?

A. No. The first time I recall you stating that was at our meeting at the bar of Carl's Restaurant on Friday, January 25th.

Q. You don't recall my saying that in the office, but would you now deny I did say it, or is it your testimony you don't remember it?

A. I am quite sure you didn't say that.

Q. You mean you merely don't remember me saying it?

Mr. Nicoson: I object to that as having been asked and answered. It is a pretty positive answer the witness has given.

Trial Examiner Kent: I think it has been definitely covered.

The Witness: Mr. Collins probably had it in his mind so [729] often he thought he said it.

Mr. Collins: I move that be stricken on the ground it is not responsive to the question.

Mr. Nicoson: No, but it is quite revealing.

Mr. Collins: May I have a ruling on that, this

(Testimony of John Despol.)

voluntary remark of the witness? May it be stricken from the record?

Trial Examiner Kent: It may be stricken.

Mr. Collins: May the remarks of counsel for the Board also be stricken, the part that it is quite revealing?

Trial Examiner Kent: What was the remark of counsel?

Mr. Collins: If we are going to have the remarks like that in, I would like to say yes, I had it in mind because I had told it to this witness several times.

Trial Examiner Kent: That may be stricken, also.

Q. (By Mr. Collins): Now, I believe you have testified, Mr. Despol, that in every meeting you had with me the question of union security came up and I invariably said we would give the maintenance of membership and escape clause, and you insisted on having a closed or union shop.

A. At no time did we request a closed shop. We asked for a union shop.

Q. The substantial difference between us was on the question of union security.

A. And all the cost and wage factors of the contract. [730]

Q. It isn't your contention you wanted O'Keefe and Merritt to pay more than 20 per cent above the going rate?

A. It was our contention you grant the employees a flat general increase of 25 cents an hour. At no time have you offered us an increase of one cent.

(Testimony of John Despol.)

Q. Do you understand the wage increase they are operating under to be an increase, or the same increase?

Mr. Nicoson: I object to that as assuming a fact not in evidence.

Trial Examiner Kent: The objection is sustained.

Q. (By Mr. Collins): Has there been any wage increase given to the employees of Pioneer or O'Keefe and Merritt?

A. No wage increase has been offered to United Steelworkers of America.

Q. Has there been any wage increase given to these employees you know of?

A. There have been rumors of wage increases that come to my attention.

Q. So then the substantial difference between us, again, was the question of union security, union shop?

A. No.

Mr. Tyre: That is objected to as having been asked and answered several times.

Trial Examiner Kent: I think it has been answered. The objection is sustained. [731]

Q. (By Mr. Collins): I told you, did I not, that the reason we would offer nothing except the maintenance of membership was because of the strong A.F.L. membership and the fact we didn't want to incur the enmity of the A.F.L. We wanted off their unfair list? Isn't that true?

A. That was part of your statement.

(Testimony of John Despol.)

Q. In fact, at every meeting I discussed the question of the unfair list?

A. Just about every meeting.

Q. Didn't I tell you the O'Keefe and Merritt Company, during the war, had greatly increased their facilities and the speed of their production, and they wanted to go into the northern markets, to wit, San Francisco and Seattle, and so on, where, in their opinion, they couldn't sell their product without the A.F.L. permission; isn't that right?

A. You stated words to that effect.

Q. Didn't I also tell you that our hot water heaters and floor furnaces would not be installed by A.F.L. help if we were on their unfair list?

A. That was your statement.

Q. Did I not tell you every other stove factory in California was signed up with the A.F.L.?

A. I think you said that.

Q. Now, at the third meeting you held with me in my office on January 3rd, didn't I again ask you to bring your own [732] committee of employees, when you objected to the committee of employees I had arranged to come up there?

A. Yes, you did. And I stated what I have previously stated——

Q. You didn't want to talk about money matters in front of the A.F.L. committee?

Mr. Tyre: Just a moment. May I ask the Examiner to instruct counsel to permit the witness to answer the question fully before the next question is asked?

(Testimony of John Despol.)

Trial Examiner Kent: I think it might be better practice, yes.

Mr. Collins: I concede that the objection is well taken. I thought the witness had finished. I apologize to the court and counsel.

The Witness: I stated what I previously stated. We objected to any committee alleging to represent the A.F.L. being present in any future meetings, and that——

Q. (By Mr. Collins): You mean—proceed. Excuse me.

A. And that the United Steelworkers of America would determine when it was wise to bring in a committee of employees in the plant to negotiate the contract, or whether we would request all employees to participate in the goldfish bowl negotiations.

Q. To be specific, when you said American Federation of Labor being present, you meant these employees were members [733] of the American Federation of Labor?

A. No. My understanding was, from your statement, that they claimed to represent the American Federation of Labor. I have never had any proof to that effect; that is your statement.

Q. Didn't I tell you I merely sent out to the factory to have a group of representative employees, and whether they were A.F.L. or C.I.O. I didn't know?

A. No. You stated you wanted the A.F.L. peo-

(Testimony of John Despol.)

ple in the plant to know what was going on. You wanted it open and above board.

Q. Didn't I say I wanted everyone in the plant to know what was going on?

A. That is right. And I said we would provide you with that opportunity.

Q. Didn't I tell you I didn't know anything about the boys, except they were working in that factory?

A. I don't remember words to that effect. I assume you know who you picked.

Q. Didn't I tell you I didn't pick them at all, I sent out in the factory to have three or four representative employees of the O'Keefe and Merritt Company or the Pioneer Electric Company to come in and sit down and listen to our controversies?

A. You didn't tell me how you selected them. I still don't [734] know. Or who selected them, if you didn't.

Q. I will tell you that Mr. Johnnie Levascos selected them. Now, then —

Mr. Nicoson: Will you also say it was at your request?

Mr. Collins: No, I will not say it was at my request. I sent out in the factory to have some boys selected. I didn't care who they selected.

Mr. Nicoson: I move to strike counsel's remarks as a voluntary statement.

Trial Examiner Kent: It may be stricken.

Mr. Schullman: I think the interpretation by the Board's counsel——

(Testimony of John Despol.)

Mr. Nicoson: I agree to that. They both should go out.

Trial Examiner Kent: The remarks of both counsel may be stricken.

Q. (By Mr. Collins): Mr. Despol, during the war you served on a number of occasions as labor representative on the War Labor Board.

Mr. Nicoson: That is objected to as being immaterial.

Mr. Collins: I submit this is cross-examination.

Trial Examiner Kent: Read the question.

(The question was read.)

Trial Examiner Kent: The objection is sustained.

Mr. Collins: Objection sustained?

Trial Examiner Kent: Yes. [735]

Mr. Collins: I wish to make an offer of proof. At this time I offer to prove, by the testimony of this witness, if I am permitted to bring it out, that as labor representative on the War Labor Board during the war he, on a number of occasions, agreed to the maintenance of membership and the escape clause to a number of contracts presented to the War Labor Board to approve or disapprove.

Mr. Tyre: That being the purpose of the question, I will join in the objection made by Mr. Nicoson.

Mr. Nicoson: I move the offer be stricken. It not only is immaterial, but it also goes to the quasi judicial capacity in mind with this witness; it can't be examined into here.

(Testimony of John Despol.)

Mr. Collins: I submit that such a thing—in all the law of the land there is not a rejection of an offer of proof.

Trial Examiner Kent: The offer will be denied.

Mr. Schullman: As a matter of legal procedure, I agree with counsel. No court can deny an offer of proof. You don't accept the evidence of the witness. An offer of proof, as such, must go into the record. It can't be denied. There is no law, of the N.L.R.B. or under the legal decisions, that will permit it.

May I say previous decisions in hearings in this court, in the N.L.R.B., we had about four days of offers of proof before different Trial Examiners, and they were accepted, not [736] from the standpoint the witness was permitted to testify, but the offer, as such, must be accepted.

I would like to see any law contrary to that. I think counsel is perfectly right. I think we ought to have some legalistic background of these things.

Mr. Collins: Mr. Trial Examiner, if I understand you, you have rejected my offer of proof. I wish to inquire, is the matter going to be stricken from the record or will it be there for the review of a court of law, if it is necessary?

Trial Examiner Kent: Yes, your offer, as stated, of course, is in the record.

Mr. Collins: Very well.

Q. (By Mr. Collins): Now, I believe you testified, when I asked you to bring your committee, you said that at an appropriate time you would have a

(Testimony of John Despol.)

goldfish bowl negotiation or something of that kind?

A. If that proved to be necessary.

Q. You didn't want to discuss these various money matters in front of this committee; is that true?

A. That is correct. It wasn't our committee.

Q. Now then, I believe you said, in connection with the question of veterans' privileges, or something like that, in your contract, that one of the veterans at the meeting agreed with you that it was a good thing. Which veteran was that?

A. I don't recall the gentleman's name. But because he had a veteran's jacket on I asked him didn't he think that was a good clause for a veteran?

Q. I try to have a league of nations at all these meetings. Was he an Italian, Mexican-American, Negro, or the White-American? Do you recall.

A. The only thing I am sure of is that he was not a Negro; beyond that, I don't know.

Q. That was the meeting on January 8th, the fourth meeting, I believe, you testified, according to my notes, that this conversation took place?

A. It was the second meeting after the new year; that is the thing I am sure of.

Q. January 8th, our fourth meeting.

A. January 8th, I think it is.

Q. At which meeting, according to your notes, you testified we had Collins, Despol, Cunningham, Castro, Daley and Arlotti present?

(Testimony of John Despol.)

A. Whatever names my notes stated is what I testified to.

Q. Do you have your notes here, so you can refresh your [738] recollection?

A. It may be that that particular question of mine was directed at the first meeting in January, rather than the second meeting in January.

Q. I am not trying to confuse you.

A. Cunningham, Castro and Daley and Arlotti were at the January 8th meeting.

Q. That is the meeting you were referring to, and I have taken down in my notes.

A. That is correct.

Q. Very well. You know it was not a colored man. Do you know whether or not it was a Mexican?

A. I am sorry. I don't recall as to the nationality. I don't normally inquire into those questions; no concern to me, his nationality.

Q. Have you had a chance to compare the contract that you submitted to the O'Keefe and Merritt Company with that which has been signed between the A. F. L. and the Pioneer Electric Company?

A. I haven't even read the contract signed between the Pioneer Electric Company and the A.F.L. I glanced at it, the first page; that is as far as I got.

Q. In our meeting of January 25th, which would have been our fifth meeting, I believe you testified that you and Mr. Conway appeared at that meeting.

A. No.

Q. I guess you came alone?

(Testimony of John Despol.)

A. I came alone, and you stated you were glad to see me alone.

Q. Didn't you tell one of the committeemen, Mr. Johnny Levascos, not to come to the meeting, you didn't want anybody at those meetings?

A. I don't recall when it was I told Levascos—one time I told him I hoped he would not attend any more meetings because no meetings would be conducted with his presence there from there in.

Q. Did you tell him you hoped he wouldn't come there, or he better not come there?

A. He better not come there, there wouldn't be any meeting.

Q. You didn't tell him what it meant, you merely told him he better not come there.

A. I told him he better not come there, there wouldn't be a meeting.

Q. Didn't you tell me not to have any committeemen there at this meeting on the 25th of January?

A. That is correct. We would determine when we needed a committee from the United Steelworkers of America.

Q. Didn't I, at this meeting, tell you we would agree to pay the same rate you got for the employees at that time out on strike at Boyle or Continental Can? In other words, [740] whatever rate they got we would pay the same thing, without the strike?

A. And I asked you if that meant the same

(Testimony of John Despol.)

increase that was secured at the Continental Can, and you said no.

Q. In the course of our discussion, didn't I tell you, "Maybe we are paying too much now. We are not going to give an 18-cent increase or a 25-cent increase or 30-cent increase over our current rate." I would agree to meet the rate you ultimately secured for these people, without any strike?

A. I think you made such a statement, but, of course, such a statement is an impossible one to put into effect because the operations are different in a can plant as compared to a stove manufacturing company.

Q. We have a punch press operator in a stove plant as well as a can plant?

A. The operations are different. The can plant operations are all automatic or semi-automatic.

Q. We have automatic and semi-automatic operations in a stove factory; don't we?

A. Yes, but not the same type as a can factory.

Q. Isn't the setup of the Boyle Manufacturing Company exactly the same as at the Pioneer Electric Company? I say isn't the Pioneer Electric or O'Keefe and Merritt setup and Boyle exactly the same?

A. I wouldn't say it was exactly the same. You have some [741] similar operations. In the case of Boyle, they raised their rates 18½ cents an hour.

Q. It is the same type of work?

A. In some departments.

Q. Well now, Mr. Despol, did I not tell you we

(Testimony of John Despol.)

would pay the same rate for the same operations after they got their increase and after you got through with the strike at O'Keefe and Merritt, or Pioneer Electric, pay the same thing, whatever you got out there, whatever the steel industry finally settled, we would pay it? Didn't I tell you that?

A. Yes. And I asked you if that meant you would match the increase at all other plants we were bargaining with; made every one sign a contract for 18½ cents above their previous rates.

Q. Now, then, did I not, in one of the negotiations with you in the office there, and in front of this committee, tell you that the Pioneer Electric Company, or some other company was going to take over the manufacture of the gas ranges, or, at least, I thought they were going to; negotiations were then being conducted?

A. No, not in front of that committee.

Q. Didn't you tell me at that time that you wouldn't—or words to this effect: That you wouldn't take a thing like that lying down, that you had gone to too much trouble and put in too much organization expense to stand for it? [742] Didn't you use those words or words to that effect?

A. I believe I told you that at the bar.

Q. Didn't I then tell you——

A. You told me that at the bar.

Q. Wherever the conversation took place, did I not then tell you I would see if I could get my clients to help your union cover that expense in the

(Testimony of John Despol.)

interest of maintaining peaceful relations out there?

A. I don't think you ever offered to help my union cover expenses. You offered to help me personally.

Q. Now, didn't we have a discussion in the office, and on numerous occasions, to this general effect: First of all, I told you that the Los Angeles Police Department was giving ample protection out there. Didn't I say that? A. Yes.

Q. And didn't I tell you that the American Federation of Labor would have their representatives out there any time you had demonstrations or strikes, or what not, in an attempt to get their men through the picket line?

A. Yes, you promised me that.

Q. Didn't I also tell you that if there was any difficulty out there, there would be a lot of bloodshed around, because of the competing factions?

A. You promised me that.

Q. Didn't I tell you I hoped we would settle this matter [743] in court or some peaceful method, rather than to do that? Didn't I promise you that?

A. You promised me that, too, I think.

Q. Didn't I also tell you, in connection with your threat to bring about some sort of an economic boycott, to wit, keeping O'Keefe and Merritt and Pioneer from getting steel, didn't I tell you that O'Keefe and Merritt and Pioneer bought their steel from sources they had for 25 years, and that they

(Testimony of John Despol.)

bought it from so many jobbers you wouldn't have any luck trying to cut the steel off?

A. That is correct.

Q. Didn't I tell you that if you got the teamsters or carpenters or others out, the railroad workers wouldn't handle the steel you were trying to ship to other factories? A. That is right.

Q. Didn't I tell you that since John L. Lewis, since he had gone over to the A.F.L. Camp, he might shut off your coke, so you wouldn't be able to make steel? A. That is what you said.

Q. And didn't I tell you that the only logical thing for you to do, in an attempt to fairly—was to take this dispute where you now have it, before the N.L.R.B.? Is that what I said?

A. Yes, and I said we would not restrict ourselves to before the N.L.R.B. [744]

Q. I told you, when you asked if we would discriminate against any of your people that came up to testify, I said, no, as long as they tell the truth; isn't that so?

A. I think that is what you stated.

Q. So, after all, in various and lengthy colloquy, in which we went into more things than I have now discussed with you, didn't I tell you that if you would keep the thing peaceful we would see your union didn't lose anything in their organizing expenses they had gone to out there?

A. You didn't say anything about the union losing anything. You said you would see it was worth my while.

(Testimony of John Despol.)

Q. Didn't I always treat you as the representative of the union? Was this offer made to you on behalf of your union?

Mr. Tyre: I object to that. It calls for a conclusion as to what was in Mr. Collins' mind when this offer was made.

Trial Examiner Kent: Reframe the question.

Q. (By Mr. Collins): Well, I wasn't trying to sign a contract with you as an individual with the Pioneer or O'Keefe and Merritt; was I?

Mr. Tyre: Object to that on the same ground.

Mr. Nicoson: I also object. He is assuming a fact not in evidence; trying to sign a contract with anybody.

Mr. Collins: I withdraw the question and I will reframe the question. [745]

Q. (By Mr. Collins): Was I negotiating with you as an individual for O'Keefe and Merritt?

Mr. Tyre: Again I object, your Honor, as to what was in this man's mind when he was negotiating; that is, in Mr. Collins' mind.

Mr. Collins: What is the ruling?

Trial Examiner Kent: I will sustain the objection.

Q. (By Mr. Collins): Did you ever represent yourself to me as an individual trying to sign a contract out there, or as a representative of the Steelworkers?

A. I always represented the United Steelworkers of America.

(Testimony of John Despol.)

Q. Therefore, when I discussed these matters with you of signing contracts, you knew I was talking about the Steelworkers; did you not?

Mr. Tyre: I object to that. It still requires a state of mind as to what was intended by Mr. Collins.

Mr. Collins: Does Mr. Tyre want the truth to get into the record?

Mr. Tyre: If Mr. Collins wants to take the witness stand, we will be glad to examine him.

Mr. Collins: If you want to testify, counsel, I will let you get up there.

Trial Examiner Kent: I will sustain the objection. Go ahead.

Q. (By Mr. Collins): Now, Mr. Despol, getting back to the [746] days gone by, I have known you around town for approximately how long?

A. Well, I met you once in 1938—no, '39 or '40; '39 or '40. Since then I don't think I have had any direct relations with you except on the case of running into each other.

Q. We have been running into each other around town ever since that date occasionally and probably infrequently until the last couple of years; isn't that so?

A. I don't think I ran into you during the war years in any labor questions.

Q. Don't you recall having a hearing before the War Labor Board, and I think it was——

A. Yes.

Q. ——the Voight Rubber Company or the

(Testimony of John Despol.)

Whiting-Mead Lumber, and you had a back injury—— A. The Voight Rubber.

Q. ——you were conducting the hearing lying on your back, because you had a back injury.

A. Yes.

Mr. Collins: I can't very well forget it. It was an unusual procedure.

Mr. Garrett: May I have the last two questions and answers read?

(The record was read.) [747]

Mr. Garrett: By the way, I just noticed—my hearing is not very good—I hear a great deal better with that door closed. I wonder if we might keep it closed.

Trial Examiner Kent: Yes. [748]

Q. (By Mr. Collins): Now, Mr. Despol, do you recall during the course of the hearing that—I think the man's name was Snyder, wasn't he, the Board's representative?

Mr. Nicoson: Objected to. What went on at that hearing is all immaterial.

Mr. Collins: This is cross-examination, if the Board please.

Trial Examiner Kent: Will you show me how it is possibly germane to the issues?

Mr. Collins: I don't want to disclose the purpose of this until I get along.

Mr. Nicoson: I object to it as being immaterial.

Mr. Collins: This is a preliminary question.

Trial Examiner Kent: I will take it, subject to a motion to strike, assuming that the——

(Testimony of John Despol.)

Q. (By Mr. Collins): Do you know who the Board's representative was at the hearing?

A. I was the labor member of the Panel.

Mr. Nicoson: May I have an objection to all this line?

Trial Examiner Kent: Yes, your objection may be treated as continuing to the entire line.

Q. (By Mr. Collins): At this particular hearing, the War Labor Board appointed the public representative?

A. They appointed also the labor and industry representatives.

Q. This one man who was appointed by the Board, I believe he [149] was an employee of the Board, and I believe his name was Snyder. He was a slightly built, blue-eyed gentleman, and rather young; Do you recollect having a drink with him and me down after the hearing was over with?

A. I have had so many drinks with you I am just trying to think whether I had one then or not. I believe I did.

Q. It was down in the bar next to the—

A. Berliner's.

Q. I can't remember the name, Berliner's, I think it was, yes. Do you remember having a drink with me down there and with the Board representative? A. We may have had a drink.

Q. As a matter of fact, we had a drink down there every evening after the hearing was over, did we not?

Mr. Nicoson: I object to that as certainly not

(Testimony of John Despol.)

preliminary. I move to strike the whole testimony along this line on the obvious ground that it is immaterial, and I object to further questions on the same ground.

Mr. Collins: I do not intend to disclose the purpose of my cross-examination. I will submit to the rulings of the court.

Mr. Nicoson: These have certainly gone beyond preliminary questions, now, your Honor.

Trial Examiner Kent: No, I think this last question is entirely unnecessary, but you may proceed. I will take it [750] subject to the motion to strike this entire line.

Q. (By Mr. Collins): It was after working hours, was it not, Mr. Despol? A. Yes.

Q. At this meeting we discussed a number of things, did we not, including what I thought of the War Labor Board and what I thought, that there should be a court set up to try this kind of matters so there would not be a lot of people getting hit in the head at the back ends of factories. Isn't that true? Do you recall this conversation?

Mr. Nicoson: I object to all this as immaterial.

Trial Examiner Kent: I can't see how it can possibly be germane to these issues. Would you mind stating your purpose briefly?

Mr. Collins: Not in front of the witness. May we have the witness excused from the room?

Trial Examiner Kent: The witness may go out.

Mr. Collins: I don't think it is necessary for him to go out. He will tell the truth, anyway. The

(Testimony of John Despol.)

purpose of this is to show I had a number of conversations with Mr. Despol after work hours and outside of speaking of my representation of any particular client, and I submit it is a perfectly proper question on cross-examination. There are things I said that could be construed as against the interests of the client, and I was telling Mr. Despol those things personally, [751] and he told me things personally that might be construed as against the interest of his unions, and if necessary, I am ready to go into those conversations, but I am merely trying to establish the fact there was nothing unusual about Johnny and I having a drink together and talking about a lot of things.

Trial Examiner Kent: What advantage would that be to us? It might tend to show that your relationship——

Mr. Collins: You are now forcing me to disclose the purpose of the cross-examination, Mr. Trial Examiner.

Trial Examiner Kent: ——was generally friendly.

Mr. Collins: Mr. Trial Examiner, I now wish to cite this as misconduct on the part of the Trial Examiner, forcing me to disclose my intent on the cross-examination of the witness in a very vital issue of this case. The witness is now thoroughly forewarned as to what to expect of cross-examination and he knows exactly what he has to avoid and what he has to say now.

(Testimony of John Despol.)

Trial Examiner Kent: I offered to exclude the witness.

The Witness: So help me, I don't know what you are getting at.

Mr. Nicoson: That is a rather strange objection, because just before Mr. Collins stated what he was going to prove by this witness he said—you offered to have him excluded and he said it didn't make any difference, because he would [752] tell the truth, anyhow, and now in the next breath he says he is going to evade something.

Mr. Collins: The disclosure was before the offer to exclude the witness, Mr. Nicoson. May I proceed? What is the ruling?

Trial Examiner Kent: Well, I would like to know the purpose of it. Maybe you better step out.

(The following took place out of the presence of the witness:)

Mr. Collins: The purpose of this cross-examination, and bear in mind we have a room full of witnesses who are going to back up this story and they already hear this. However, the purpose of this cross-examination is to show that at the evenings in question at Carl's Cafeteria wherein I had drinks with Mr. Despol, it was after 5:30, after 5:30 in the evening. I was an employee of O'Keefe and Merritt Company up until 4:30. This was a personal affair between Johnny and me, having some drinks and discussing a lot of things with me. He is now testifying to some of them, some which he is not testifying to in court. I intend to show that

any alleged misconduct of mine in attempting to get this man on my expense account or his union on the expense account were matters that were outside the scope of my authority as attorney, and were matters that were being discussed between us in a purely confidential relationship as friends. Anything [753] that was taken up with him would have subsequently have had to have been ratified with my clients, which opportunity was never given, because the charges were filed and hearing commenced upon immediately. It shows anything that happened was after work hours, just like anybody else would talk. We talked about a lot of things, even the question of Communism came up in those meetings, brought up by the union, not by me. That is the first time I heard about it. So that is the purpose of the cross-examination then, to try to find out, it was after work hours, nobody was present. I wish the record to show at this time that Mr. Conway of the C.I.O. Steelworkers is there conferring with his client and he has heard everything I have had to say, so now there is no further purpose in cross-examining this witness or anybody else.

Mr. Tyre: May I have that last statement read back to me, I didn't hear it.

Mr. Collins: I said there is no purpose in cross-examining Conway. He has heard all of this and he can't be confused.

Trial Examiner Kent: The witness may return.

(The following took place in the presence of the witness:)

(Testimony of John Despol.)

Mr. Collins: May I proceed?

Trial Examiner Kent: You may proceed.

Q. (By Mr. Collins): Mr. Despol, the meeting that we had at [754] Carl's Cafeteria, after our meeting at my office on the 25th of January, which was our fifth meeting, started out by the invitation, "Let's go out and have a drink," is that right?

A. That meeting started by "Let's go out and have a drink?"

Q. I mean after we had finished discussing matters pertaining to my client in my office, one of the other of us said, "Let's go out and have a drink."

A. Yes.

Q. And we went to Carl's Cafeteria and we had had drinks there a number of times before that, had we not?

A. Yes.

Q. At which times we had discussed a variety of things.

A. That is true.

Q. Some of which might have been construed as unfavorable by various clients and operations that I represented, is that true?

A. I don't think that is true.

Q. Didn't occasionally I tell you that I thought this employer or that employer was guilty of some unfair activities so far as his relations with unions were concerned?

A. You might have said that with respect to some of your employers, but I don't think you named any of them, any particular employer.

Q. Did I further tell you certain things, that

(Testimony of John Despol.)

I thought that certain agencies that were organized to settle labor [755] relations were biased in favor of certain unions and against other unions?

A. You certainly said that.

Q. Didn't I also tell you that I thought that my opinion was that the method of handling these cases would be to have Congress assemble and pass an Act and set down rules and regulations for procedure under which people can hire and fire, that was my theory exactly, to have it written out, isn't that true?

A. Yes, that is what you said.

Q. This was after working hours, and you understood I didn't intend, I didn't tell you we would continue our negotiations at Carl's, did I?

A. No.

Q. So, after we discussed a variety of things and you got to telling me about how much expense and how much trouble you had gone to, I said, "Well, we will take care of the expense, I will see if I can get my clients to take care of that organizing expense." Didn't I tell you that?

A. I told you then——

Q. Just answer. Didn't I tell you that at my very first meeting at Carl's, not the one where you had all the witnesses around, but at our very first meeting at Carl's?

A. I told you that——

Q. Isn't that what I told you? Isn't that substantially [756] true, now?

A. I told you that the union had put on a long organizational campaign both then and in previous years, and that under those circumstances,

(Testimony of John Despol.)

what we better do—further than that, that the important thing at stake was the principle of the right of employees under the Wagner Act to choose their own union.

Q. I know, but we were not talking in court then, we were not talking in high sounding phrases about the Wagner Act and so on.

A. I think we discussed that.

Q. We just talked about the simple thing, just got down to the fundamental we were talking about, didn't I tell you, at least didn't I tell you in this first meeting at Carl's that some organization I thought was going to take over the operation of the O'Keefe and Merritt Company?

A. Yes, you said that.

Q. Didn't I tell you at that time that one of the reasons that they were to take it over was because there would be considerable tax savings for the O'Keefe and Merritt Company if they took it over?

A. Yes, you said that.

Q. And didn't I also tell you, in line with this Kaiser-Fraser deal that there would be O.P.A. concessions granted under similar circumstances? [757]

A. Yes, you said that.

Q. I don't know whether I told you or not, but the concessions would amount to a saving of approximately \$30,000.00 daily, did I tell you that?

A. I don't think you mentioned the amount.

Q. Not figures, I just told you that it was a substantial amount.

A. Yes.

(Testimony of John Despol.)

Q. Didn't I tell you at that meeting that there were a lot of young fellows around O'Keefe and Merritt Company that were very well thought of by O'Keefe himself, and that he wanted to give an opportunity to them, and that is why the Pioneer had been set up originally?

A. I think you said something to that effect.

Q. And particularly, didn't I tell you what a wonderful salesman this Mr. Durant was, how the company wanted to help him out some way, and they had promised him help during the war?

A. I think you said that Mr. Durant had been the engineer of O'Keefe and Merritt and that he would be heading the Pioneer Electric.

Q. Didn't I also tell you that he was the engineer and practically in charge of the Pioneer Electric all during the war?

A. Yes. [758]

Q. And didn't I tell you that the Pioneer Electric Company had done this generator wiring and so on so much cheaper than anyone else—I will reframe the question. Don't you recall me telling you that O'Keefe and Merritt had attempted to do the wiring themselves at first, and then they had seen that the work done by the Pioneer was so much cheaper than anyone else that Pioneer Electric did it from the beginning to the end of the war?

A. No, I don't think you told me that.

Q. Do you recall specifically my telling you that those demonstrations that you had been holding out there had delayed our negotiations?

A. Yes.

(Testimony of John Despol.)

Q. Took up a lot of my time running around getting police protection and making speeches to these boys that they were free to come on to work, and so on?

A. Yes, you said that you made two speeches, as I recall.

Q. No, I made one speech. A. One speech?

Q. It was an announcement, telling them that the Police Department would protect them so that they could come in, didn't I tell you that?

A. Yes.

Q. Didn't I tell you, also, that those preliminaries, that we had, were just sort of battle conditioning for the [759] employees so that they would come up and see a demonstration out there that they wouldn't be in fear of it, because they had gone through two or three times before, in my opinion, that was the result it would have? [760]

A. Yes, you said that at the time.

Q. And that we had the police there and if you wanted to force this into a strike they would still be able to get in there and work?

A. Yes, you said that.

Q. Didn't I also tell you at that very time that we didn't have any steel, we were reconvertng, and it would be a very bad time for a strike?

A. Yes, you said that. You worked out our strategy for us.

Q. Do you remember now also that I told you that the best way for you to handle this problem was to go to court with it? A. Yes, you said that.

(Testimony of John Despol.)

Q. And do you particularly remember my telling you that the only thing that I would object to around there, the only thing I thought was unfair, would be a lot of C.I.O. people and A.F.L. people and neutral people getting hurt around the factory in the event there was an ill advised strike?

A. I think you said words to that effect.

Q. And so as a matter of fact didn't I tell you that if you would come to the courts and let the courts decide this matter, if that meant any loss to the union, I would see that it was recompensed out of an expense account, would not lose its organization expenses, didn't I tell you that?

Mr. Nicoson: Just a minute. I object to that, what is in the mind of the union. That is in Mr. Collins' mind. [761]

Mr. Collins: I will reframe the question.

Q. (By Mr. Collins): Mr. Despol, didn't I tell you that I would take care of the organizing expenses through my expense account? Didn't I say, "Don't resort to violence, but come into court and let the courts determine the issue. Didn't I tell you that or words to that general effect?

A. I had no personal organizing expenses. You discussed the question, the expenses that the union had been put to.

Q. Whether I mentioned your personal expenses or union expenses——

A. I don't know what you meant.

Q. We are not asking what you thought now. Didn't I use those general words?

(Testimony of John Despol.)

A. You discussed the question of the expenses of the union.

Q. Did I discuss the question of my expense account, did I not? A. Yes.

Q. Didn't I tell you that I would see if my clients would take care of it, do you recall that?

A. I don't recall that exact statement.

Q. You would not deny that was said, though?

A. No.

Q. Now, then, to get back to Friday the 1st when we had the—by the way, I am very curious to find out how you maintained that table empty in a crowded place like that. [762]

A. It was not crowded when we came.

Q. You must have had a couple of boys leave.

A. Now, Cecil, you should have been more observant. It was crowded about a half hour after we had arrived and all sat down.

Q. Now, then, at this meeting on February 1st in Carl's Restaurant, in front of your numerous witnesses, didn't you tell me that the best deal you would make would be to let the A. F. of L. have all the factory except the Stove Mounters, that that was the best deal that you could make? Didn't you say that?

A. No, I asked you what would be your position if the A. F. of L. and C.I.O. could come to an agreement on the question of jurisdiction and bargaining units, whether or not you would consider it.

Q. In other words, you offered me, if the A. F.

(Testimony of John Despol.)

of L. would agree to that, you would consider it, that would be your best proposition, in other words?

Mr. Tyre: Just a minute. I will object to the question.

Mr. Collins: The answer was yes.

Mr. Tyre: Just a minute. I move the answer be stricken from the record. I move that the answer be stricken and that counsel be requested to rephrase his question, and ask the questions separately.

Trial Examiner Kent: Read the question. [763]
(Question read.)

The Witness: No, I didn't say this——

Trial Examiner Kent: Wait a minute. Was there an answer taken to that?

The Witness: I didn't answer.

Trial Examiner Kent: You might reframe the question.

Q. (By Mr. Collins) Didn't you tell me if it was agreeable—didn't you ask me would I consider a proposition to this general effect, that if the A. F. of L. would agree to concede the Stove Mounters to the Steelworkers, that you might consider conceding the rest of the employees to the various A. F. of L. locals affected? What I am trying to get at, didn't you tell me that you wanted, all you wanted actually was the Stove Mounters, or some words or phraseology like that?

Mr. Tyre: I will object to that again, another double barreled question. If counsel would permit the witness to answer the first question and leave

(Testimony of John Despol.)

out the second one, we could proceed a little more orderly. In the present state of the record that is a double barreled question.

Mr. Collins: The witness understands my question.

Trial Examiner Kent: I think the witness may answer if he understands. If you have any doubts of the question——

The Witness: I don't know which particular question I am answering now, but I will state that—— [764]

Q. (By Mr. Collins): I want to know about the Stove Mounters. That is what you want, isn't it, or that is what you wanted then, isn't that true?

A. I couldn't state whether we were considering changing the bargaining unit or the question was mentioned in discussing the question with the A. F. of L. We did go into discussions of that nature.

Q. Well, was the proposition made to me in any way in any phraseology that you care to use to the general effect which meant that you would concede to the A. F. of L. everything except the Stove Mounters, if it was agreeable all the way around?

Mr. Tyre: I object. That has been asked and answered twice or three time now.

Mr. Collins: Let me answer it. If he would answer it once, I would not have to keep on asking.

The Witness: Shall I answer that?

Trial Examiner Kent: Yes, you can answer that.

The Witness: I said we were willing to sit down

(Testimony of John Despol.)

and discuss the question of the bargaining unit and the question of the Stove Mounters unit, both with the A. F. of L. unions concerned and with the company, and with the men involved, but we have never been able to effectuate that particular suggestion.

Q. (By Mr. Collins): The purport of this discussion then [765] was to the general effect that if it was agreeable all the way around you would concede the Stove Mounters are the only ones you actually wanted, isn't that true?

A. No, I never said that.

Q. Whether you actually wanted them or not, Mr. Despol, I am not trying to limit you or take you into some kind of a trick question——

A. For example, the Machinists have never had a membership in the plant prior to the execution of this Pioneer Electric contract. Mr. Reed indicates he has one. Well, there may be one, I will concede him that.

Mr. Reed: I had one. We now have all of them.

The Witness: If he had one, it escaped my notice. I don't think in a globe type election the Machinists would have had any chance of winning, with the one man vote.

Mr. Reed: That is your opinion.

The Witness: That is my opinion.

Q. (By Mr. Collins): Now, Mr. Despol, to get back to this fatal evening again, I still would like to get this one thing in my mind clearly. If it was agreeable all around, you were willing to discuss

(Testimony of John Despol.)

the question of letting the A.F.L. have everything except the Stove Mounters?

Mr. Tyre: Objected to as asked and answered.

Mr. Collins: Well, it has not been answered. I submit there is no answer before this court. [766]

Trial Examiner Kent: I think we might save time by letting the answer be taken.

A. We were willing to discuss the question.

Q. (By Mr. Collins): In this place there were a lot of people, were there not, the place was crowded, all the seats at the bar were taken, and after we sat down every seat in the house was filled, was it not?

Mr. Tyre: May I have the counsel determine whether this is the first or second meeting at the bar you are now referring to?

Mr. Collins: This is the second meeting at the bar, the one which the witness identified as February 1st, after 5:30.

Mr. Tyre: Just a minute. I will object to that. I think the testimony is that the meeting took place at 4:00 p.m.

Mr. Collins: Well, what time did that meeting take place on February 1st at Carl's Restaurant wherein you had your various witnesses?

A. At 4:00 p.m. it started.

Q. What time did we finish?

A. Oh, I would say about 20 after 5:00.

Q. Now, then——

A. Quarter after 5:00.

Q. Are you familiar enough with the place to

(Testimony of John Despol.)

know whether [767] or not it is their rush hour, immediately after people getting off work and going home?

A. From about a quarter of 5:00 on it is the rush hour.

Q. When we first came in there all the seats were taken except the table that we sat down at, is that true?

A. No, it is not. Two of the booths were occupied and several were unoccupied. I think most of the bar seats were filled.

Q. It is a small place, the entire bar is smaller than this courtroom, is it not? A. Yes.

Q. Indicating a room approximately 40 feet long and approximately 18 to 20 feet wide?

A. Yes. When we first sat down there were one or two empty booths in addition to the one we took.

Q. When we sat down they were all filled, isn't that true?

A. No, there were still one or two empty booths, including the largest booth which would seat more than the one we sat in.

Q. There was a juke box in the place, was there not? A. Yes.

Q. And a lot of drunks at the bar shouting and talking and slapping each other on the back?

A. I don't know whether they were drunks or if they were shouting and slapping each other on the back. I observed no [768] such.

Q. Anyway——

(Testimony of John Despol.)

Mr. Tyre: Just a minute. Let the witness finish the answer.

A. I didn't observe anyone slapping each other on the back.

Q. (By Mr. Collins): There were a number of good looking girls in there that were talking loud and vociferously laughing and meeting and talking to the various drunks in the place, were there not?

A. I don't know. I didn't observe any such actions.

Q. And waitresses walking around and rattling their dishes and glasses and making change and otherwise interrupting various conversations?

A. The only time our conversation was interrupted or any glasses rattled was when she picked up the glasses at our table, when our glasses were changed and when I stuck to my milk.

Q. You were sober and I and Conway proceeded to get ourselves tinkled, is that correct?

A. No, that is not correct.

Q. How many drinks did I have?

A. I would say you had three or four and Conway had three or four.

Q. And I drink doubles, do I not, Scotch and water?

A. Yes, I know on occasions you drink doubles.

Q. Is it your testimony that when we came into this place that this place was very quiet and that my conversation was audible all over the room?

A. No, toward the latter half of our session

(Testimony of John Despol.)

there the juke box was playing at intervals, but not during the first session.

Q. Did you have any witnesses attending our first meeting at Carl's?

A. Not to my knowledge.

Q. Well, let's see, now. We came into this place and we sat down, the table had been arranged for the victim to walk in and set down at.

Mr. Tyre: I object to that as obviously improper.

Trial Examiner Kent: This is cross-examination.

Q. (By Mr. Collins): The fly walked into the spider's net at the appropriate place. That is true, isn't?

Mr. Tyre: I object to that. That is improper cross-examination.

Q. (By Mr. Collins): You were really trying to entrap me into making some indiscreet statements, were you not?

Mr. Tyre: I object to that statement too.

Trial Examiner Kent: This is cross-examination. The answer may be taken.

A. I had requested——

Q. (By Mr. Collins): Just answer my question now. [770]

Mr. Tyre: I think the question can't be answered by yes or no, your Honor.

Mr. Collins: I didn't ask for a yes or no, Mr. Tyre. I am just attempting to have him answer my question.

Trial Examiner Kent: I have previously occa-

(Testimony of John Despol.)

sionally instructed witnesses that they should always attempt to answer questions briefly and concisely, that if in fairness a very brief concise answer does not seem to be a complete answer, the witness is always entitled to amplify. I have also instructed the witnesses that that does not mean that he should amplify every answer.

Mr. Collins: I will reframe the question since there have been a number of objections.

Q. (By Mr. Collins): You and Jerry knew that I was coming there at a certain time, because you made the appointment? A. Yes. [771]

Q. And Jerry arranged to have witnesses seated around, isn't that true?

A. I arranged that.

Q. You arranged that; and the purpose of this was to trap me into making some indiscreet statements that you might testify to in court, was it not?

A. The purpose of it was to have witnesses to whatever conversation took place.

Q. You knew what the conversation was going to be, having had a previous conversation with me, did you not?

A. Well, I knew what the previous conversation was. I didn't know whether or not you were going to repeat your conversation or whether you were going to make some other proposal or discuss something else. I had no way of knowing definitely and precisely what you were going to say. That is, I am not psychic.

(Testimony of John Despol.)

Q. You knew what the conversation was at the first meeting? A. That is correct.

Q. And I believe you testified that you were going to think that proposition over?

A. That is correct.

Q. And so, if you had decided—had you or had you not decided to refuse my proposition before you decided on this second meeting?

A. After I had left you at the first meeting at Carl's Bar, I had decided to reject it. [772]

Q. So that then your purpose was——

A. After I had left it.

Q. So that then your purpose in getting me down to Carl's on the second occasion was to entrap me into some form of indiscreet statement, is that not true?

A. Well, we only wished to have witnesses at any future meetings with you on the subject of our relations at O'Keefe & Merritt.

Q. Now, Johnny, since this hearing has been going on I have had a few drinks with you. Have you had witnesses at those meetings other than those that were present at our table?

A. I have not had the opportunity to arrange that.

Q. We had a drink last night after court, didn't we?

A. Yes. Mr. Nethington and Mr. Conway were with me last night, and no conversation took place in respect to this case of any significance. We con-

(Testimony of John Despol.)

fined ourselves to the girl that was getting cigarettes, as you recall.

Q. Well, I am learning to be careful around you. You didn't ask any of the employees of the O'Keefe & Merritt Company to come down and listen to these conversations, did you? A. No, I didn't.

Q. When you accepted my invitation to have a drink with me last Friday, were you considering leading me into some damaging statements then, or did you consider that you had your case well enough established by that time? [773]

Mr. Tyre: May I have that question read?

Mr. Collins: I will withdraw the question.

Trial Examiner Kent: Read the question, Mr. Reporter.

Mr. Collins: I will withdraw the question.

Q. (By Mr. Collins): Mr. Despol, we have had drinks together—I would just like to get this question straightened out—we have had drinks together and we have discussed many things of a personal nature, have we not?

A. Yes, we have discussed the philosophy of life, I guess, as well as personal remarks at one time or another.

Q. When we were having those personal discussions, it was not your theory that I was going to tell anybody that you were concerned with the nature of our conversation, was it? A. How is that?

Q. You didn't think, it was not your theory that I was going to tell any of those conversations, was it?

(Testimony of John Despol.)

A. I didn't know—I don't know that the thought entered my mind in one way or the other.

Mr. Collins: That is all.

The Witness: Maybe you have. I don't know.

Mr. Collins: Well, I have not.

Trial Examiner Kent: Yes. Mr. Garrett.

Q. (By Mr. Garrett): Mr. Despol, when you first met Mr. Collins in 1939 or 1940, do you remember what occasioned that meeting? [774]

A. Yes, sir. We were negotiating a contract for the Pacific Cast Iron Pipe & Fitting Company. He was counsel or representative for that company, and I was representative for the United Steelworkers of America.

Q. Is that the Pacific Iron Fitting Company, or Pipe and Fitting Company?

A. Pipe and Fitting Company.

Q. On the occasion of your first meeting with Mr. Collins, did O'Keefe & Merritt enter into your conversations at all?

A. It has been so many years ago I don't recall. I don't think so.

Q. At that time were the United Steelworkers conducting any activities with respect to O'Keefe & Merritt?

A. Not at that particular time. We had conducted activities in 1940 and 1941, but not to any great amount.

Q. This meeting on Pacific Cast Iron Pipe & Fitting Company was before or after the C.I.O. activities at O'Keefe & Merritt?

(Testimony of John Despol.)

A. I would say it was before.

Q. At the time of your first meeting with Mr. Collins on the Pacific Cast Iron Pipe & Fitting Company contract, did you know that he had any connection with O'Keefe & Merritt?

A. I think I had some vague understanding that his offices were located in that building, the best I can recollect.

Q. At that time was the A. F. of L. picket line still on at [775] O'Keefe & Merritt, or had it been removed by then?

A. I don't think there was any picket line at that particular time, to the best of my knowledge.

Q. You knew, of course, at that time, however, that the dispute between the A. F. of L. and O'Keefe & Merritt had not yet been resolved or terminated?

A. No. I had known that there had been a strike at O'Keefe & Merritt, because one of our representatives, Mr. Anaya, formerly had worked at that plant and had walked out on a strike at that time. 1936.

Q. Was it 1936 or later?

A. I think it was 1936, possibly '37. '36.

Q. Were you in the C.I.O. in 1936?

A. Yes. I was in the—a member of the Steelworkers Organizing Committee, which was set up between the Amalgamated Iron, Steel & Tin Workers of North America and the Committee for Industrial Organization, which had been constituted by

(Testimony of John Despol.)

eight A. F. of L. unions that eventually evolved into what is now known as the Congress of Industrial Organizations, C.I.O.

Q. That was the Steelworkers Organizing Committee?

A. That is correct. It is now known as the United Steelworkers of America.

Q. In connection with the A. F. of L. strike at O'Keefe & Merritt, did you know at the time of the C.I.O. activities [776] there in 1940 and 1941 that the A. F. of L. dispute with O'Keefe & Merritt still existed at that time?

A. No, I did not know that.

Q. What was your information in that respect?

A. The only information I had was that there had been a strike which had been lost by the A. F. of L., and that was the end of it, as far as I knew.

Q. What did you know about the status of the company with respect to the A. F. of L. unfair list, if anything, at that time?

A. Nothing at that time.

Q. Nothing at that time? Did you have occasion from time to time to see the weekly publication of the local A. F. of L. Central Labor Council and other councils, known as the Los Angeles Citizen?

A. No, I do not see that paper regularly. I have seen it on rare occasions when some associate in the A. F. of L. has given me a copy, is about the only time I have seen that paper.

Q. When first after the A. F. of L. strike which

(Testimony of John Despol.)

you place in 1936 and some of the other evidence in this case has placed as late as 1939——

A. At the beginning of the strike?

Q. No, I want to make it clear that with respect to the exact time of that strike, the evidence here varies. [777]

A. I understand that. I may be off a couple of years.

Q. Yes. And your recollection is that——

A. 1936 to 1938 would be my understanding when the beginning was.

Q. Whatever it was, that two-year period, we will call it the period of the strike or the picketing, Mr. Despol, when first after the end of that period of cessation of picketing at O'Keefe & Merritt did you learn, if you ever did learn, that the company was still on the A. F. of L. unfair list?

A. During the election campaign for the National Labor Relations Board election.

Q. When would you place that, about?

A. That was in the fall of 1945.

Q. These C.I.O. organizing activities in 1939 and 1940 which you previously referred to on my examination here——

A. I would say it was 1940, probably, there was some literature distribution.

Q. But you did not learn about the unfair list until the fall of 1945?

A. As far as I personally am concerned, no. What Mr. Anaya, who conducted the campaign in

(Testimony of John Despol.)

1939 and 1940, what his knowledge was, I don't know.

Q. I am getting back to the first organization, which you now place in 1940. A. Yes. [778]

Q. Was that under your supervision, Mr. Despol?

A. Well, all organization has been more or less under my general supervision, but I would say in that particular one it was 1940.

Q. How long a period does that cover?

A. There were literature distributions running over a period of a few months and on various occasions. It was not a concentrated campaign, in the normal sense of that term.

Q. Do you know when the distribution of literature began, and you know when it terminated, and it occupied several months during 1940, is that correct? A. To the best of my recollection.

Q. But during that period you did not become aware that the company was on the A. F. of L. unfair list, is that correct? A. That is correct.

Q. Was it during that period that you again met Mr. Collins or the next time after the time you negotiated the Pacific Cast Iron Pipe & Fitting Company contract with him in 1939 for 1940, or did you after the contract negotiations meet Collins on other occasions prior to the time you started your literature distribution in 1940?

A. The first time that I can recall meeting Mr. Collins after meeting him in connection with the Pacific Cast Iron Pipe & Fitting Company negotia-

(Testimony of John Despol.)

tions was at the Voight Rubber case before the Regional War Labor Board. If I ran into him around town before that, I don't recall the particular meeting.

Q. Did he represent some litigant in that case?

A. In which case?

Q. In the rubber case before the War Labor Board?

A. He represented the Voight Rubber Company.

Q. Were you there in some official capacity?

A. I was the labor member of the panel of the Regional War Labor Board.

Q. That is the occasion you previously referred to on your cross-examination by Mr. Collins, where you had seen him back there some time?

A. Yes. That was in 1945, I believe.

Q. It was not that late, was it?

A. It was the winter of 1944-45. I think it was the first part of the year 1945. Mr. Collins may remember that better than I. Ask him the question.

Q. Then I take it that during the literature distribution activities which you place in 1940—during the course of those activities did you meet Mr. Collins?

A. That is correct. We were trying to organize the men.

Q. And I take it from what you say that you did not have occasion to, during those activities, to meet anyone connected with management?

A. That is correct, unless they went through

(Testimony of John Despol.)

with the workers [780] and took our literature. If they were management people I didn't know it.

Q. You did not go in and talk to management?

A. No.

Q. Did you at that time know that Collins represented O'Keefe & Merritt?

A. I knew he had offices there. As to what his particular capacity was, it had never been spelled out for me.

Trial Examiner Kent: The record may show that the witness asked the Trial Examiner if we were going to recess at 12:00.

The Witness: Promptly.

Trial Examiner Kent: I told him yes.

Q. (By Mr. Garrett): During the course of the Voight Rubber Company War Labor Board case, either in the offices of the Board or elsewhere when you met with Mr. Collins, did you have any conversations with him relative to the labor situation at O'Keefe & Merritt?

The Witness: May the reporter read that?

(The question was read.)

The Witness: No, I did not.

Q. (By Mr. Garrett): Now, after that Voight Rubber War Labor Board case, when is the next time you talked to Mr. Collins or anyone representing management, concerning the labor situation at the O'Keefe & Merritt Company? [781]

A. The time I called him on the phone, that I have testified to, the first phone call I had with Mr. Collins.

(Testimony of John Despol.)

Q. And that, I think, you testified previously, was some time shortly after October 23, 1945; is that correct? A. Thereabouts.

Q. That was during the course of your organizing campaign at the plant; is that correct?

A. That is correct.

Q. Now, then, at the close of the Voight Lumber War Labor Board case——

A. Voight Rubber, not lumber.

Q. I take it then, up to the time of this phone call, shortly after October 23, 1945, from that time back to the close of the Voight Rubber case, you hadn't talked to Mr. Collins at all?

A. I would say that is correct.

Q. Or to anyone during that period connected with management regarding the labor situation at O'Keefe & Merritt?

A. I talked with management in respect to O'Keefe & Merritt in the winter of 1943-44, when I made arrangements to have literature distributed at the plant, inasmuch as the plant guards had attempted to prohibit me and my associates from distributing such literature. We arranged to be fingerprinted by the United States Army Signal Corps, so there would be no question about the national security, national [782] safety being involved; identifying who was it that was distributing literature for our union or contacting employees in the plant.

Q. Was that inside the plant or outside?

A. Was what inside the plant or outside?

(Testimony of John Despol.)

Q. Do you recall who you talked to at that time connected with management?

Mr. Nicoson: Counsel, the witness has asked you a question. He said, "Was what inside the plant or outside?"

Mr. Garrett: I am sorry.

Trial Examiner Kent: Yes.

Q. (By Mr. Garrett): You testified, in connection with getting straightened out on the distribution of this literature in the winter of 1943 or 1944, you talked to somebody connected with management?

A. I talked, I believe, with the Captain of the guards, or whoever was in charge of the plant safety protection.

Q. Anyone else?

A. No. I think that is the only one I talked to. The guards, themselves, if you call them management.

Q. Your only talks were with plant protection?

A. That is correct, to the best of my recollection.

Q. Did you have any other conversations with Mr. Collins up to the time of this phone call around October 23, 1945, that you haven't told us about?

A. Not to my recollection.

Q. Are there any other conversations up to the time of this phone call on or about October 23, 1945, that you haven't told us about with anyone connected with management at O'Keefe & Merritt?

A. Not to my recollection.

Q. Now, when you talked to Collins on the

(Testimony of John Despol.)

phone, shortly after October 23, 1945, for the first time in that period, I take it, that your organizing drive at O'Keefe & Merritt was already under way?

A. That is correct.

Q. How long had it been under way?

A. I would say approximately a month.

Q. But during that time you hadn't had occasion to negotiate with management for any reason?

A. Yes, I think there was the question raised there again about literature distribution.

Q. Well, I am not going——

A. In which I had gone——

Q. I am not going to ask——

A. You asked the question.

Q. That is all right. I just want you to know that unless you want to make a statement, which you are perfectly privileged to do, I am not interested particularly myself in conversations with plant protection. [784]

A. This had to do with literature distribution in which the management had written a letter to the United States Army Signal Corps requesting that the street be closed from everybody. The Army had confirmed that until I pointed out to them that what they were after was specifically excluding the union representatives from that street, and it was not the question of general public transportation going through the street.

The Army gave us then permission to go into the street, but kept it closed to the general traffic transportation, being a public street.

(Testimony of John Despol.)

Q. In other words, about the same kind of situation you were confronted with back in 1943, the latter part of 1943; is that right?

A. It was a bit less difficult, in that we didn't have to be fingerprinted.

Q. During the month your drive had been going on, before you had this first talk with Collins on the phone shortly after October 23, 1945, you hadn't had occasions to talk with anyone representing management, except those persons who were in plant protection; is that right? [785]

A. Not to my recollection, unless somebody said hello to me at the plant gate.

Q. Did any of your subordinates have any negotiations during that period of one month, to your knowledge?

A. No negotiations to my knowledge.

Q. Now, at the time of this conversation with Collins shortly after October 23, 1945, had you heard anything about the A.F.L. unfair list in connection with the company, from anyone?

A. Shortly after what?

Q. I think the question will be clearer if we have the stenographer read it.

(The question was read.)

The Witness: The first time that we became aware of that question as an issue was a couple of weeks just prior to our conference up here at the Board, when some of the men in the plant raised that as an issue.

(Testimony of John Despol.)

Q. (By Mr. Garrett): Did you make any inquiries about it after the question was brought up at that time?

A. I, at one time, sought to contact Mr. Mashburn of the Building Trades Council of the A.F.L. I was unable to reach him.

Q. Any other inquiry?

A. I think I repeated that just prior to the election. And shortly after the election I again made an effort to contact [786] Mr. Mashburn. In fact, I saw him over at the Biltmore Hotel when he and I were on a meeting on another matter. At that time we briefly discussed the situation.

Q. Was that before or after the National Labor Relations Board election?

A. That was after the N.L.R.B. election, when I saw Mr. Mashburn.

Q. So up to the time of the N.L.R.B. election you hadn't found out anything about the status of the company on the A.F.L. unfair list, except what was told you either by employees of or management of the company; is that correct?

A. Or by one of the A.F.L. representatives down at the gate during the election campaign. I think there was some conversation, I don't recall the particulars.

Q. After your conversation with Mr. Mashburn at the Biltmore, have you ever had any conversation since with anyone else connected with the A.F.L. or with Mr. Mashburn as to the status of

(Testimony of John Despol.)

the O'Keefe and Merritt Company with respect to the A.F.L. unfair list?

A. Well, I have had conversations with Mr. Lawrence of the Teamsters, Mr. Blaney of the Teamsters, Mr. Bassett—

Mr. Nicoson: Has Mr. Bassett been identified?

The Witness: Of the A.F.L. Central Labor Council. With the president of the Painters District Council.

Q. (By Mr. Garrett): Who is that? [787]

A. Tommy—Handford, is that—

Q. Brandford.

A. Brandford. With Mr. Roberts at the Teamsters' hall one night, of the Stove Mounters' Union.

Q. Anyone else?

A. And perhaps with various and sundry business agents that appeared at O'Keefe and Merritt plant during those morning morale building demonstrations that were staged by our organization.

Q. I notice you say you talked about it with Lawrence of the Teamsters and Blaney of the Teamsters and Bassett of the A.F.L. Central Labor Council. Was that at the N.L.R.B. conference or at some subsequent time?

A. That was subsequent to the N.L.R.B. conference.

Q. Were all these conversations concerning the status of the company on the A.F.L. unfair list with the men that you have mentioned subsequent to the N.L.R.B. conference?

A. I may have discussed it with some of the

(Testimony of John Despol.)

A.F.L. representatives at the gate prior to the N.L.R.B. conference; that is possible.

Q. I mean exclusive of conversations at the gate, were all these conversations with the names you have just mentioned in your answer to the previous question?

A. They were subsequent.

Q. Subsequent? [788]

A. Yes.

Q. To the N.L.R.B. conference?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Were they all subsequent to the election, with the exception of what conversations you might have had at the gate?

A. I would say that is correct.

Mr. Garrett: I notice it is now 12:00 o'clock.

Mr. Collins: May we go off the record?

Trial Examiner Kent: Off the record.

(Discussion off the record.)

Trial Examiner Kent: On the record.

Mr. Collins: In the off the record discussion here I have explained to the Trial Examiner I am not feeling well. I may not be able to come back this afternoon to the afternoon session.

In the event that no other witnesses are produced, except Mr. Despol, who is now on the stand, I won't insist on my right to being excused. In the event there are any new witnesses called, then I will ask the Trial Examiner, in the event I am unable to return this afternoon, to adjourn the meeting when you finish the cross and redirect of Mr. Despol.

It may be we can work out some sort of a stipula-

tion as to the testimony as to these various witnesses, as to what these [789] various witnesses are alleged to have heard, relating to the conversations Mr. Despol has been discussing. I won't be here to enter into the stipulation. It will depend on the further testimony of Mr. Despol, as to whether the other counsel here can agree to it.

In view of the situation, I would like to ask the court's permission to absent myself from the hearing, if necessary, and not go into any other matters than those I have already indicated. [790]

Mr. Nicoson: I don't have any serious objection to that, except, as I told you yesterday, I am put a little hard on the matter of time with respect to Mr. Conway. If we can arrive at a stipulation concerning him, why, I will be very happy to, and I think perhaps it will perhaps obviate the necessity of putting Mr. Conway on the stand at all and will accommodate us all as to time.

Of course, Mr. Despol is still on the stand, and I have no idea of how long his examination will take. I am informed by counsel that further cross might be rather lengthy and will probably take the rest of the afternoon. If it were not for the press of time I would gladly join with counsel. While I am not at this time stating if he is absent that I will put on another witness or even insist on it—I think in fairness to him I wouldn't insist on it—as to the matter of putting any other witness on, except Mr. Despol, I think I can give him that assurance at this time.

Mr. Collins: Mr. Nicoson, in the event you don't ask any more direct questions of Mr. Despol—in other words, if we were to finish with Mr. Despol's testimony I would be willing to stipulate Mr. Conway, if he were asked the same questions as to meetings he attended, his answers, both on direct and cross-examination, would be the same. Then I don't know what you are going to bring out this afternoon.

Mr. Nicoson: I will have to ask Mr. Despol a few [791] questions on redirect. I don't want to foreclose myself that opportunity. Otherwise, I would be glad to enter into the stipulation at this time.

Trial Examiner Kent: That is Mr. Despol on direct?

Mr. Nicoson: That is right.

Mr. Collins: I would be willing to stipulate to this, Mr. Nicoson: That as to the testimony of Mr. Despol, up to this point, I will stipulate that Conway's will be the same as to the meetings he attended. He didn't attend the first meeting in the cocktail bar and he didn't attend some of the meetings at my office. I will be willing to stipulate his testimony, as to the meetings he attended, will be the same as Despol's up to this point.

Mr. Nicoson: I would like to do that. However, I have no way of knowing what is going to be brought out this afternoon.

Mr. Schullman: I think the thing to do is to stipulate tomorrow when you appear and find out what has developed.

Mr. Collins: I think that is the best thing.

Trial Examiner Kent: You haven't any objection then to our proceeding with Mr. Despol this afternoon?

Mr. Collins: No.

Trial Examiner Kent: We will adjourn until two o'clock.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [792]

After Recess

(The hearing was reconvened at 2:15 o'clock p.m.)

Trial Examiner Kent: On the record.

Mr. Schullman: I wish to state merely, on behalf of Local 792, for all the reasons heretofore set forth that I object to the introduction in evidence of Respondent's Exhibit No. 3, insofar as it is applicable or is attempted to be applicable to Local 792.

Trial Examiner Kent: The record may so show.

JOHN DESPOL,

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Cross-Examination

(Continued)

Q. (By Mr. Garrett): Now, turning for a moment, Mr. Despol, to any conversations that you may have had prior to the N.L.R.B. conference with representatives of the A.F.L. at the gate, do

(Testimony of John Despol.)

you have any clearer recollection at this time of any such conferences or conversations at or near the gate with A.F.L. representatives prior to the N.L.R.B. election?

A. Not of any particular one conversation, no.

Q. Can you recall any particular person or any particular conversation or the substance either of the person's identity or the conversation with sufficient clarity so [793] you would feel justified in giving it here?

A. No, I don't. I recall one time Mr. McMurray, I believe, for the Machinists, was passing out literature; I remember his presence there. I don't recall any particular incident.

Q. (By Mr. Garrett): Do you remember yesterday we put in that memorandum, Mr. Despol, by Mrs. Phoenix of the general conference at the Board concerning the election? Do you recall any other conferences other than that when you were present at the Board here in which the question of the labor situation at O'Keefe and Merritt was discussed?

A. I think that was the only Board conference that took place.

Q. In connection with that particular election that took place in November, 1945, you were only up here at the Board once, is that correct?

A. No, I was up at the Board signing the papers, but so far as the conference is concerned with any of the parties, it was just that one time.

(Testimony of John Despol.)

Q. On the occasion when you were up and signed the papers, was that the R petition?

A. The R petition, yes.

Q. Signing those, but there was no one here at the time you did that representing the A. F. of L. unions or the Company, I suppose, is that right?

A. At the time we signed the R petition? [794]

Q. Yes.

A. That is right. There was no one else present.

Q. There were no other conferences you personally attended at the Board in connection with the matters which were to be disposed of in that N.L.R.B. election in November, 1945?

A. I don't recall any.

Q. Did you sign the R petition, Mr. Despol, for the investigation of representatives which resulted in proceedings before the Board in this region in April of 1944?

A. Did I sign it in April of 1944?

Q. That is right, did you sign the R petition?

A. I don't believe so.

Q. Are you familiar with the fact that there were such proceedings along about April 1944?

A. I am familiar that there were proceedings.

Q. Was that on petition of the C.I.O.?

A. On petition of United Steel Workers of America.

Q. I do not have the file of those proceedings, but excerpts from the hearing have been included in the evidence here in the form of a rejected exhibit. Were you present at that hearing?

(Testimony of John Despol.)

A. For eight months of 1944 I was in Washington, D. C., and therefore was not—including the time when this hearing took place. I was not present.

Q. You are not a very good man to question about that [795] particular R petition then, I don't suppose. Who of your assistants would be more familiar with it? A. Mr. Anaya.

Q. Was the O'Keefe and Merritt Company named as the respondent in those representation proceedings in the early part of 1944?

Mr. Nicoson: I will stipulate that they were named as the Company, but not as the respondent. We do not refer to corporations as respondents in R cases.

Mr. Garrett: All right.

Q. (By Mr. Garrett): Those were proceedings involving the O'Keefe and Merritt Company, is that correct? A. That is correct.

Q. Your organization, the United Steel Workers, represented to the Board at that time that there was a matter of representation to be determined by the Board involving the O'Keefe and Merritt Company, is that correct? A. That is correct.

Mr. Tyre: I don't mind the answer going in, but I think any further questions of this witness as to that petition and what the proceedings were at that time are not proper, because this witness is not the proper witness to make those answers. He was not here, he has already testified, and there-

(Testimony of John Despol.)

fore anything that he would say would be a conclusion. [796]

Trial Examiner Kent: Purely hearsay I think.

Mr. Garrett: It may be hearsay but—I beg your pardon, Mr. Tyre.

Mr. Tyre: I think the witness has already named the person that would be best qualified to answer those questions, and in order to save time we ought to call that witness and not ask this particular witness those objectionable questions.

Mr. Garrett: Do you have him present, Mr. Tyre, Mr. Anaya?

Mr. Tyre: He can be.

Mr. Garrett: It occurred to me no particular harm might be done if we saved a little time by asking Mr. Despol just what is the responsible head of the organization. He knows about those proceedings. Mr. Despol will understand. If it is a matter with which he is not reasonably conversant he can say, "I don't know. You will have to ask Mr. Anaya."

Q. (By Mr. Garrett): Do you understand that, Mr. Despol? A. I do.

Q. Do you know enough about the thing from being the responsible head of the organization to be able to tell me whether in those proceedings the organization, which you head, described an appropriate unit in their petition to the Board? [797]

Mr. Nicoson: I will stipulate they did. All petitions describe an appropriate unit. That one was no different.

(Testimony of John Despol.)

Q. (By Mr. Garrett): Do you know that your petition described the unit? A. Yes.

Q. Are you familiar enough with the form of the petition to know that in such petitions the petitioner is required to set forth the identity of any other labor organizations which may be interested in the representation question? Do you know that?

A. Yes.

Q. Are you able to tell me, of your own knowledge, what unit your organization petitioned for in that proceeding?

A. I believe it was for the same unit as our petition was acted upon in '45, namely, the production and maintenance unit.

Q. Were the exclusions about the same, if you recall?

A. To my knowledge they were about the same.

Q. If you saw that petition would it refresh your memory? A. Undoubtedly.

Mr. Garrett: I will ask that the petition which, I believe, is in court, be shown to the witness to refresh his memory. I don't want to see it myself.

Mr. Nicoson: I am sorry, I don't have it in court. I can obtain it. I don't have it with me now. I will be glad [798] to get it.

Mr. Garrett: All right. If it can be sent for possibly we can come back to that later.

Q. (By Mr. Garrett): Were you away from your office here at the time that petition was filed, Mr. Despol?

(Testimony of John Despol.)

A. I don't recall when the petition was filed, so I can't answer the question.

Q. Well, maybe you can tell us during what months in 1944 you were absent from this area and in Washington?

A. From February 1944 to October 1944, except for occasional visits I made back across country on matters that required my attention here.

Q. So that by the time you got back that matter was all concluded; is that right?

A. Well, I believe that it was still in process at one time I returned here on a weekend. I don't particularly recall, without seeing the date and time of these hearings.

Q. When you had the proceedings and conference in 1945 about your petition, which resulted in the election in November 1945, did you at the conference arrange for the Company to present any payrolls? A. In '45?

Q. That is right. I am referring now to that conference set forth in Mrs. Phoenix's notes?

A. No, I believe that was the Board's function, not mine. [799]

Mr. Nicoson: I will stipulate it was, and that Mrs. Phoenix arranged for the payroll to be submitted.

Q. (By Mr. Garrett): Now, at that time, Mr. Despol, you knew, did you not, that there was another operation going on in the premises occupied by the O'Keefe and Merritt Company besides that operated by O'Keefe and Merritt.